

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, JANUARY 13, 2012
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:12 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Ron Agor
John Morgan

Jerry Edlao
David Goode
Dr. Sam Gon

STAFF

Russell Tsuji/LAND
Alton Miyasaka/DAR
Emma Yuen/DOFAW

Ed Underwood/DOBOR
Paul Conry/DOFAW
Carty Chang/ENG

OTHERS

Julie China, Deputy Attorney General
Linda Chow, Deputy Attorney General
A.P. (Tony) Locricchio, J-1 & F-1
Bruce Pacheco, D-6
Jody Hashimoto, D-6
Sheryl Nicholson, D-9 & D-10
James Raymond, D-11
Rene Umberger, F-1
Maka'ala Ka'aumoana, F-1
Robert Wintner, F-1
Inga Gibson, F-1
Dave Raney, F-1

Bill Wynhoff, Deputy Attorney General
Camille Kalama, D-6
Junedale Hashimoto, D-6
D.G. Anderson, D-9 & D-10
Heidi Meeker, D-11
Jerry Isham, F-1
Dennis Yamaguchi, F-1
Glenn Fukuo, F-1
Carina Sugiyama, F-1
Doug Fetterly, F-1
Kaimi Kaupiko, F-1

APPROVED BY THE BOARD
AT ITS MEETING HELD ON

FEB 24 2012

Willie Kaupiko, F-1
Caroline Ishida, F-1
Wayne Tsujiyama, F-1
Bob Goodwin, F-1
Jeff Apaka, F-1
Kimi Yuen, D-3
Teddy Blake, D-3
Lauri Clegg, D-17
Sam Peru, D-19

Mike Nakachi, F-1
Matthew Ross, F-1
Greg Ruell, F-1
Melva Aila, F-1
Max Graham, D-3
David Frankel, D-3
Stacy Wong, D-3
Ross Smith, M-1 to M-5

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1 November 10, 2011 Minutes

Board member Morgan recused himself from item A-1.

Unanimously approved as submitted (Goode, Gon)

Item A-2 December 9, 2011 Minutes

Board members Morgan and Goode recused themselves from item A-2.

Unanimously approved as submitted (Edlao, Gon)

**Item D-18 Withdrawal from Governor's Executive Order No. 3481 to the
Department of Agriculture; Issuance of Right-of-Entry to Ka'ala
Farm, Inc. for Maintenance Purposes, Waianae-Kai, Waianae, Oahu,
Tax Map Key: (1) 8-5-006:004 por.**

Russell Tsuji, Administrator for Land Division conveyed item D-18 and related some history where DHHL asked for Lot 18 and DOA was willing to turn it over, but during the course of the day DHHL changed its mind. This will stay with the Department.

Board member Gon asked whether the applicant agreed with staff's recommendation and Eric Enos (Ka'ala Farm, Inc.) acknowledged that saying yes.

Unanimously approved as submitted (Morgan, Gon)

**Item J-1 Report to the Board Regarding Proposed Settlement of a Class Action
Lawsuit Concerning Parking at the Ala Wai Small Boat Harbor
(AWSBH) and Request Authorization to Provide a Hearing Officer(s)
as Required by the Settlement.**

**The Board may go into Executive Session pursuant to Section 92-
5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney**

on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) introduced Deputy Attorney General (AG) Bill Wynhoff who is representing staff. Mr. Underwood related some background on implementing parking at the Ala Wai Small Boat Harbor (AWSBH) on approval that they hire Diamond Parking. Diamond Parking was responsible for the collection of fees as well as parking enforcement which included either towing of vehicles or they put in this parking penalty on cars where the meter had expired. Subsequent to them starting a law suit was filed in Federal court in December 2010 which made two claims: 1) The State or Diamond Parking was required, but did not provide constitutional due process for tows. 2) Regarding the parking penalties that would be placed on cars. The reaction to that was we temporarily stopped towing vehicles until we could consult with our legal counsel. We also put together a tow hearing process. If a vehicle is towed when people went to pick up their car they are given a form that says if you want to contest this tow this is how you do it that they would come here and we would do these tow hearings. We've done about 15 to 20 hearings so far. Also, Diamond Parking ceased issuing a penalty that they were putting on cars. As we went through this case it became a class action lawsuit and now we're at the point of a settlement agreement and it's listed in the Board submittal based as two sub-classes: 1) for persons towed before December 10, 2008. 2) Persons who paid a parking penalty after December 10, 2008. It goes on to say what we would pay out and how we would move forward at this time. The actual in-depth details of this settlement can't be discussed right now, but we could discuss it in Executive Session if you so choose.

Bill Wynhoff, Deputy Attorney General said that the one thing he wanted to emphasize to make sure the Board is aware of going forward is as is indicated some of the people who were towed they maybe able to get compensation if they only ask for a hearing. As part of the settlement process agreement we provide a hearing officer as we've been doing going throughout. We don't know how many there are going to be, but that is the particular commitment of the Board's resources and it's the Department resources. Most of the details other than what we put in this submittal are still relatively confidential and I would be more than happy to discuss them with you (the Board). If you wanted to have more details I would ask that you consider going into Executive Session with respect to that.

Member Agor asked if I were to park illegal right now on the street and my car gets towed by a vendor of the City do I have that right to go through the same process and contest. Mr. Wynhoff said you would not be afforded that process by having discussions with the City attorneys as to whether you should be afforded that and I don't want to say they are violating the constitution. I don't know. Member Agor said we're being nice that's all.

Member Goode said if we have to go to Executive Session say so. The public submittal says two things that caught my eye: Plaintiff's attorney will receive a \$125,000 in fees

and costs subject to court approval. Named plaintiffs will receive \$3000 each. He asked who is paying. Us? Diamond Parking? Or both? Mr. Wynhoff said the details of where the monies are coming from are the specific thing and he would rather not discuss it in open session.

Board member Gon moved that the Board go into Executive Session pursuant to Section 92-5(a)(4), HRS to consult with our attorney on our questions and issues relating to the Board's powers, duties, privileges, immunities and liabilities. Member Edlao seconded it. All voted in favor.

Chair Aila asked whether anyone was here for item D-3 and there was. He said we were waiting for some folks to fly in from Kaua'i.

9:20 AM EXECUTIVE SESSION

9:33 AM RECONVEND

Anthony Locricchio, an attorney testified that he wanted to point out to the Board that the problem discussed at the AWSBH also exists at the DLNR building. You have inadequate public parking in the October 2011 meeting in the public parking spaces were State vehicles that work for DLNR. Tickets were issued and people have to keep quarters in hand and there are delays in meetings like this where they have to feed the meters or they are subject without the same protections that are now being discussed. In your own house you have exactly the same problem. That problem must be changed or there will be additional action brought. Thank you.

Unanimously approved as submitted (Morgan, Gon)

Item D-6 Issuance of Revocable Permit to Jundale U. Hashimoto for Residential Use, Anini, Hanalei, Kauai, Tax Map Key No.: (4) 5-3-007:005 and Amend Prior Board Action of January 23, 2009, Agenda Item D-1, Re-Submittal Forfeiture of Revocable Permit No. S-6040, John K. Hashimoto and Junedale U. Hashimoto, Permittee, Anini, Kauai Tax Map Key: (4) 5-3-007:005.

Mr. Tsuji reminded the Board that item D-6 came up on numerous occasions over the past 5 or 6 years and he noticed this item didn't appear to be resolved and certainly not to his satisfaction. He had staff look at the evaluation of the rent where the rent was adjusted during annual renewals of revocable permits (RP) that annually comes to the Board. One of the Board members recognized this as a new, exclusive beach area where the beach is right across the street. Mr. Tsuji asked staff to look at the rent and whether that was fair considering the location. What happened was they looked at the rent and the staff appraiser came up with a market value jumping it from what it was about \$500-\$600 per month to \$3500 per month. Ms. Hashimoto made those payments, but struggled over the years. Staff looked at that and other DLNR special type of leases where for certain reasons it wasn't driven by market value. Under the Statute for RPs this Board does have

the discretion if it's not required to use an appraised or value by a licensed appraiser or issue a fair market value which is required of staff in all of our long term leases. The evaluation was done and came up to about \$400 or so a month which is a lot more affordable than \$3500 per month. The issue was this outstanding rent of about \$150,000 showing on the books. Auditors questioned Mr. Tsuji what staff is doing about this delinquency. As explained in the submittal, staff with this new evaluation was approved by the Chairperson. We went back and retro it of a particular date which staff chose that indicated ...about 2008 where Junedale Hashimoto seemed to be having problems. Staff adjusted the rent and the outstanding balance came down to less than \$25,000 instead of \$150,000. Mr. Tsuji was asked to assist on this case by the Office of Attorney General and he was familiar with the history which he related. Junedale Hashimoto's grandmother was issued a 999 year homestead lease and those leases are very restrictive. You can't mortgage the property and other restrictions on that type of lease. But, those who had the long term lease had an option to buy. The grandmother did elect to buy. The property was appraised at fair market value and offered for sale. Like most people back then (territory/statehood) she was not able to come up with the cash and agreed to have the balance paid over an installment agreement, equivalent to an agreement of sale. Subsequent to that, for whatever reason, the grandmother had some problems making the payments. The Land Board (the current Board's predecessors) terminated it for default. Because of the grandmother's death the matter went to probate. The probate court had a rule that this long term lease was still alive and passed it on to an heir. The Department of Attorney General intervened in that probate and had the court correct that decision informing them that because of the default the Land Board had taken action on terminating the installment agreement or agreement of sale. There was nothing to pass and the court agreed issuing an order. This is significant because when he was a Deputy Attorney General he discussed this matter with counsel for the Hashimotos, but because of that court order and his understanding of real estate law he did not believe that it could simply revert back to the 999 year lease at this time. In dealing with this RP, that is what you got and you got to deal with it. How do you deal with it? This is my presentation of a solution on this matter. The staff evaluation, both of them, were not quote unquote staff compliant or IE an appraisal as defined or regulated by the DCCA. This is an in-house staff evaluation. But, significant on the current evaluation is that if you look at the comparables they looked at where other DLNR managed residential type leases and the kind of rents they are being asked to pay some of them are in comparison to what Hashimoto was paying. Mr. Tsuji didn't think it was fair for her to pay that amount when others were getting quite a discount. In some instances, giving an example on the Big Island where people were victims of a prior lava flow and their rent is about \$132 a year. This is his recommendation.

It was asked by Member Agor whether this is only for the lifespan of Mrs. (Junedale) Hashimoto only or is she going to be able to pass it down. Mr. Tsuji said we haven't made that a condition and haven't thought about that in this particular matter. There have been instances where a parent may hold an RP and staff would see if there are any children that would like to take it over. He is open to anything for consideration. Member Agor related that Mrs. Hashimoto wants to live her life there and the family has been helpful in keeping her there. If this agreement will be restrained to her lifespan and

renegotiate with heirs, if there are any, you could add that to the language. Mr. Tsuji noted that this RP like all others will be renewed annually and he has no problem with that as a condition.

Member Edlao asked whether the 999 year lease is still applicable. Mr. Tsuji said as a Deputy AG it was, but also we had this court order which suggested going back to court and have the court make the action at the time it was terminated. There were more discussions about the lease which is a legal matter. What was clear was the installment of sale for purchase of the property was terminated. It was unclear whether the issue of the 999 year leases was brought up.

Member Edlao asked what she (Junedale Hashimoto) was paying towards the agreement of sale before her difficulties. Mr. Tsuji said his recollection was it was not significant. It was not 80% of the debt and it was a long time ago. He doesn't believe the payment record was on file. Member Edlao said he doesn't want the money she paid in to be forgotten about. Mr. Tsuji pointed out that they had occupancy. He doesn't think the Deputy (AG) who handled the probate considered this but what he knew at the time there is a current case that says this agreement of sale when you enter into them in the old days you could have paid 90% of the amount, but if you don't pay and defaulted you lose everything. In another day it was litigated all you have to dispute for. Although legal title did not pass the pass upon execution of agreement of sale is equitable title and what that means is even though it doesn't have the deed in the homeowner's name he has a vested interest up to how much to pay off and the debt. If you sell the property there is some interest to invoke to the owner. In this situation we didn't sell it. Staff took it back and the family member went on a RP. Mr. Tsuji recognized that while he was Deputy Attorney General.

Camille Kalama, staff attorney with the Native Hawaiian Legal Corporation testified she was here on behalf of Junedale and Jodie Hashimoto. Also, here are her cousins Bruce and Haunani Pacheco who are the son and daughter of one of the would be successors of the 999 year lease. She appreciates the Board members' questions recognizing the 999 year lease on this property and that 999 year lease don't require rent at all. When the attempt was made to purchase the property Mrs. Hashimoto's mother paid about \$33,000 to the Department. It's a question whether the failure to complete an agreement of sale is grounds for cancelling the 999 year lease because of what the lease states failure to fulfill conditions of the lease itself is grounds for cancellation. It's difficult to litigate that issue this much later. Russell, you are correct that it was in the probate and the AG had it removed from probate. It's my understanding currently there is no court order regarding the 999 year lease. Mr. Tsuji said he recalled it was corrected and Ms. Kalama said right, it was in the probate and it was removed. As far as she knows there is no court order or decision that the failure effectively cancelled the lease. That is a bigger issue and what you are touching on is the long term security of this family as Junedale has shown. She is dedicated to this aina. She is committed. Her family has strong ties going back a 100 years at least to that lease and probably before and the cultural connection and knowledge base that goes with that is valuable to all of us who live here. That is why Junedale struggled to pay \$3556 a month for 4 years which comes out approximately to \$180,000.

She gave up her car. She gave up her telephone. She gave up anything she could to remain on that land. She walked up that road to get to work every day. You may have heard from the family on the kind of dedication she has. We appreciate staff's reassessment of the rent. This issue has been up in the air for a few years now and it's very stressful for Junedale who continues to live in uncertainty. The family is agreeable to that rent from here forward. The other issues is something we hope we could work on to give them some longer term security in being there because as you understand leases and now the permit its impossible to get financing to fix your home which is probably a 100 years old and was built by their own family. It is not a vacation rental. It is not a luxury mansion. It is 896 square feet with a shed that is inhabitable. During that time the family was not permitted to use the land to raise income by renting, by sub-leasing or otherwise and they never have. They have kept in compliance with the requirements with that land as far as they are not building illegal structures, not storing old vehicles. They maintain it and malama this aina. We asked considering adding Jodie Hashimoto who is present. She has been the contact person for these issues for the last 2 years because Junedale had to give up her phone and her mail is not at her residence having to walk up to the Post Office. Jodie and Junedale would like to be on the permit together. As far as working out a payment plan or working on this issue of the back rent the family would like to do so and is encouraged to work with Chair Aila on this.

Member Agor asked whether they would be opposed to restricting the discounted rate of \$454 per month to the lifespan of Junedale and renegotiating. Ms. Kalama said if that's possible that would be excellent and they would appreciate it.

Junedale Hashimoto testified appreciating this Board and the previous Board for taking the time to listen to them to try to work out something. She appreciated the staff members for working on this to bring this to the table so they may respond in kind.

Bruce Pacheco testified when this started in 2004 when Junedale's rent went from \$500 to seven times more the next month I realized she needed some help. He related some family history where his great grandfather built the house and signed the lease February 1, 1911. He thanked the Board members and Mr. Tsuji. Mr. Pacheco referred to previous testimonies questioning whether the lease should have been cancelled based on the special agreement sale and being in default which he would like to re-visit later on, but doesn't want to jeopardize his cousin's needs and who lives there. They come from a tight knit community and our children seem to be threatened right now with access to that property. He referred to the amount Junedale has had to pay that she is only one person when her sister stepped in and mortgaged her home. Their family has always tried to be responsible about this lease and tried to be compliant, but it was a struggle and Junedale got into arrears which is when he and Haunani stepped in to support her. We would like to see a resolution on this matter by coming to an agreeable payment schedule. We would need Jodie on the lease or be at risk for lack of communication and not resolving any issues. Junedale is prepared to pay the \$450 per month. We want you to understand how deeply committed they are to this and why.

There were some discussions over who is the contact and Jodie Hashimoto said Jodie Hashimoto-Omo. It was asked by Mr. Tsuji who will get the billing and Jodie Hashimoto said to both.

Member Agor made a motion to approved staff's recommendation with additional conditions. Adding item 2.d. where the monthly rent of this permit shall be available only for the life span of the applicant. If Junedale passes staff will renegotiate the rent. Item 2.e. add Jodie Hashimoto to the lease. Member Morgan seconded it.

Member Gon said for the record I firmly believe that we have an important role to play in keeping kama'aina on the lands of their families in the face of history, of disenfranchisement, and escalating rents assessed on the value of surrounding properties. I think it is a major issue and I'm glad we can play a role in that.

Member Edlao asked whether the applicant was ok with the changes and whether it was no problem negotiating again after Junedale passes away. (Couldn't hear or understand her response.) Mr. Tsuji said that as long as he is at Land Division and has some say he will make it comparable to other similar type of RPs.

Jodie Hashimoto asked whether the rent is based on her sister's lifetime and not on hers because in the next 20 years would she have to go through this again. Member Agor said you would renegotiate the rent. You would be able to continue to stay there under the permit, but renegotiate the rent.

Chair Aila noted that the analysis for the negotiation on the rent would be similar to the one we are going through right now. Mr. Tsuji said this is typical of RPs which are 30 days, but they bring it back once a year and sometimes they adjust the rent. Usually, the focus is on the commercial industrial RPs.

Member Morgan supports the motion, but we don't know what the property will be like at a later date and maybe you might live some place else and this becomes a weekend home, but it is not. It is your life which is why I support the motion.

Member Edlao said that the fine has been resolved and is glad they are moving forward and he supports the motion.

Mr. Pacheco asked for one clarification to avoid the situation that they are in right now. When the rent went to \$3556 what we finally realized is the responsibility more so than ever before that you can't gain revenue from this property. At that time that \$3556 was based on market value so we were never able to achieve market value because they were restricted by the lease from generating revenue from the property. This lease the revocable 1 year \$450 per month might be negotiable as the State law requires review. Does this lease still restrict us from generating revenue? Mr. Tsuji affirmed that saying yes. It will be for the purpose which was agreed in this case, residential. Mr. Pacheco asked that is status quo, right. Mr. Tsuji said that market value at Anini Beach as you see it with three homes is really how it was at the time. Not commercial generation.

Member Edlao explained the rent stays there until Junedale passes and then the rent will be renegotiated. Mr. Tsuji said it will be re-evaluated.

All voted in favor.

The Board:

Approved as amended. Recommendation 2 was amended by adding a 2(d) and 2(e) as follows:

2(d) That the rental analysis of using other residential permits and leases as comparables for rental purposes shall continue in future years for the life of Jundale Hashimoto; and

2(e) That Jundale's sister, Jodi Hashimoto-Omo shall be added as a permittee, together with Junedale Hashimoto; billings, insurance and other notices shall be sent to both permittees.

Jodie Hashimoto-Omo

P.O. Box 203

Anahola, Kauai, HI 96703

Ph: (808) 635-3295

Email: jomo@aquaresorts.com

Otherwise, all other portions of the staff submittal and recommendations were approved as submitted.

Unanimously approved as amended (Agor, Morgan)

Item D-12 Reconsideration of Rent for Milolii-Hoopulua Residential Leases, Phase I, Consisting of Twelve (12) General Leases for Residential Purposes at Milolii and Hoopulua, South Kona, Hawaii, Tax Map Key: (3) 8-9-014: 001-013 and 8-9-014: 016.

Written testimony from Annie Tai See was distributed to the Board.

Mr. Tsuji informed the Board that this is another group of leases on the Big Island that have residential type leases on trying to be a fishing village. Their rents are not market and these are long term and are not RPs. In this case, there were re-openings as leases are at a certain point. You get an eval. on the rent and it came up to \$400 or so dollars. Staff's recommendation in the report indicated the recommendation was to stay at the fair market value, but he wanted to modify it. It's up to the Board whether you agree or not. I had similar situations where we do in-house or full on appraisal by an outside appraiser where they come up with a value of X dollars. If it drops before the Board's policy of minimum rent which was calculated to design and cover administrative costs to manage the lease on an annual basis at \$480 a month. Mr. Tsuji had outside appraisers come in a

little lower than that, he would accept the appraisal, but he would recommend the Board policy of \$480 be implemented or stayed with. That is the minimum cost that was estimated to manage a lease on an annual basis. You got to collect the payments, send out certificates of insurance, if it expires you have to keep track of those, send out if necessary reminders or notices of default or call them up and work out issues with the tenant. There is a bunch of staff time involved not just one person, but multiple people at Land Division. His recommendation is to remain at the \$480. The tenants think the \$480 minimum or \$400 that came out in the appraisal was too high, but that is the minimum and they can't go any lower.

Chair Aila asked and referred to Annie Tai See's written testimony that the rent is established by negotiations between DLNR and the recognized organizations. Mr. Tsuji said there may have been discussions with staff on the Big Island and Wes Matsunaga would say this is as low as they can go. Land Division gets zero General Funds and can only get funds from the leasing they do in the Division. Chair Aila asked whether staff's recommendation is \$440. Mr. Tsuji said his recommendation is \$480 minimum per month.

Member Morgan commented that \$40 per month is unheard of low and he is inclined to support the submittal. You can't even get a car or parking place for \$40 a month and he is inclined to support Mr. Tsuji. Member Morgan said it says \$480 per year which is reasonable.

Chair Aila noted that these folks relocated because of a lava flow. Mr. Tsuji said there was something in the legislation about a fishing village or re-establishes one.

Member Morgan made a motion to amend staff's recommendation to \$480 per year. Member Edlao seconded that. All voted in favor.

The Board:

Approved as amended. Recommendation A was amended to increase the amount of the annual rent to \$480 (\$40 per month), which would be in accordance with the Land Board's minimum rent policy (currently set at \$480 per annum that was established to cover the minimum administrative costs in managing a Lease or permit on an annual basis.¹ Otherwise, all other portions of the staff submittal and recommendations were approved as submitted.

Unanimously approved as submitted (Morgan, Edlao)

Item D-9 Resubmittal: Request for Additional Time to Cure Notice of Default, General Lease No. S-5188, Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Lessee, Auhaukeae, North Kona, Hawaii, Tax Map Key: (3) 7-5-09:43.

Item D-10 Consent to Sublease (Special Events Contract) under General Lease No. S-5188, Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Lessee, to John M. Alderson, Sublessee; Delegate Authority to Chairperson to Approve future Similar Subleases; Auhaukeae, North Kona, Hawaii, Tax Map Key: (3) 7-5-09:43.

Mr. Tsuji reminded the Board that item D-9 has come to them numerous times before and related previous history with staff. There was no commercial activity on the property and the cure period of 60 days came and went. At the last Board meeting there was minimum quorum of Board members where Board member Pacheco had to recuse from this item and they couldn't take action on this item because we didn't meet minimum quorum which is why it is back again.

Mr. Tsuji conveyed item D-10 that it is not a long term lease and its Mr. Anderson's proposal. If the Board approves that it will resolve the outstanding NOD (Notice of Default). He related some background history.

D.G. Anderson testified that like what Member Agor had said before they are working out their problems so they don't bring their problems to you and he thinks they are getting there. These are compliance and agreements they've worked out with Kevin Moore out of your Hilo Office and he thinks Mr. Moore is recommending approval. Our next step is to go back to the County. They inherited this lease that was written 20 years ago and it has been difficult getting the State and the County to read it one way, but they are getting there.

Sheryl Nicholson representing the owner of Coconut Grove Market Place testified that they are not here to oppose the request for consent. We have our concerns about what the impacts of the activities will be and the infrastructure. They have a pending request for an easement before this Board, but they hope to work those out with the Andersons. We are here on the record that they don't oppose the request or item D-9.

Mr. Anderson said that per his (Member Edlao's) lecture they did write a letter to the people on the mainland and offered to fly up to work this out. They didn't accept it, but they didn't totally reject it.

Unanimously approved as submitted (Agor, Gon)

Item D-11 Approval in Principle of Acquisition of Privately Owned Lands for Educational Purposes at North Kona, Island of Hawaii, County of Hawaii, Tax Map Key:(3) 7-5-020:079.

Heidi Meeker, a planner for the Department of Education (DOE) indicated they are seeking the Board's preliminary approval for the addition of approximately four acres of land to expand Kahakai Elementary School.

Mr. Tsuji noted there is a quit claim deed from the donor referring to Exhibit A.

Deputy AG Julie China said someone from their office discussed it with DOE's Deputy AG who is handling the matter.

James Raymond, Deputy AG representing DOE testified that the submittal includes a quit claim deed which is a transaction between two entities. There is one to be currently negotiated. Ms. Meeker noted that it's a historic thing.

Member Goode asked whether this is a donation as part of the land entitlement or is this a purchase. Ms. Meeker said it's what we called fair share contribution where we will be receiving the land partly to offset the impact to the development immediately adjacent. In this case there was more land than they're required to give so they have some land credits that they would be able to use in the future. Member Goode said it won't cost you anything and the credits for the future.

Unanimously approved as submitted (Morgan, Gon)

Item F-1 Request for Approval to Hold A Public Hearing to Adopt a New Hawaii Administrative Rule, Chapter 13-77, Oahu Aquarium Life Management, to Manage Activities of Aquarium Collectors for Oahu Only, by Restricting the Use of Small Mesh Nets and Traps Used in the Collection of Marine Fishes for Aquarium Purposes; Establishing Daily Catch and Size Limits for Various Identified Marine Fish Species; and Setting Definitions, Exemptions, and Penalties.

Written testimonies from Hawai'i County Council member Brenda Ford, Dennis Yamaguchi, Robert Parsons, Maui Mayor Alan Arakawa, Carina Sugiyama, Wayne Sugiyama, Kauai Council member Kipukai Kualii, David Raney of the Sierra Club and Inga Gibson of The Humane Society of the United States were distributed to the Board.

Alton Miyasaka, Staff Biologist for the Division of Aquatic Resources (DAR) said Francis Oishi will be here shortly and conveyed item F-1 is to request for approval to hold a public hearing to begin the process to establish new regulations for fish collecting on the island of Oahu only. He noted that these particular rules have not been reviewed by the Deputy Attorney General's office yet and will be subject to that review. Hopefully, they won't be changing the substance, but maybe some of the legal language.

Board member Agor had a question about how the fish are caught. Mr. Miyasaka said that the commercial fishermen in the room can answer those questions better than he, but he explained it's a fence net where the fisherman chase the fish into the net and they collect the fish off the net which is done at about diving depths of 30-40 feet. Some species are found deeper and some are in shallower depths.

Member Agor inquired whether there are any situations where there is potential damage to the reef by activities like walking on the reef or dragging nets on the reef. Mr. Miyasaka said usually not I would say. It's deep enough that they would not be stepping on the reef.

Member Edlao asked how long the fishermen set the net. Mr. Miyasaka said it depends on what they are going for and at what depth. They are limited by guidelines. Member Edlao had a question about setting the net and Mr. Miyasaka explained that the net is set, the fish is worked toward the net and the fishermen take off the net. It is not left there.

Jerry Isham testified that he is an aquarium fisherman from west coast side since he was 11 years old that his parents used to do aquarium fish. A group of fishermen got together recognizing that changes could be made to their industry that they need it to feed their families and pay for their children's tuition. It's in our best interest to make sure get fish, but to also eliminate any waste that could potentially be there. Mr. Isham related the problems with newer fishermen. The experienced fishermen are trying to create something to force people to learn the right way to catch fish and hold fish because in reality there is only so much fish that you can carry which is the reason for the numbers. It is also driven by market demand. He gave the example of ordering of 300 yellow tangs where there is no problem catching them, but the fishermen knows they can't carry them on the boat which is where the numbers came from. In the beginning, working with DLNR they agreed to not create BS limits and only realistic limits. Others may not agree with the limits, but its enough to make a living and ensure the longevity of the industry and he cited the example of 50 Potters angels where you could catch hundreds. It's an awesome package since fishermen came out to work on it and it's not perfect, but it is a step in right direction to ensure there always get fish because it affects them.

Mr. Isham explained the catching of fish where the majority of fishermen in this room catch with fence net or a hand net. Most guys on the west coast hand net half the time and if they see a school of fish they will break out a 20-30 feet short fence net and some guys use longer nets. As soon as they done catching the fish they pick up the net and are constantly moving and rotating dive spots because they don't want to wipe the area out. You couldn't anyway citing the example of an exterminator with a scoop net and three buckets, you'll laugh because it ain't going to happen. We always farm the areas by taking only a little bit to always ensure. I've been diving in the same spots for 20 years since his dad took them who always taught us to leave some back because it is that much harder for it to come back. This package is a good thing and a step in the right direction. It is real limits that will make an affect and impact on this trade.

Member Edlao commented how high the numbers were – 100 yellow tang, etc. Mr. Isham said everything is about terrain when catching aquarium fish. There may be places where you see 20 or 30 kole, but there are places with thousands of kole on a dive which all depends on the areas you go. Some areas have a dominant species. West coast has cleaner shrimp and there are areas with thousands of yellow tang. There are some areas with hardly any which might not be the area for the food or terrain that they need and you wouldn't go there for them. The deeper the water there is different species which is the same on the shallow side. There is not one aquarium fisherman in this room that walks on coral.

After Member Edlao's questioning Mr. Isham said he goes out to fish three times a week only on Oahu. When the aquarium fishermen talked about these rules they only wanted it

for Oahu because they only know Oahu. They don't want to tell other fishermen how to fish in their waters. That is their kuleana. They got to manage their fisheries that they go to because they the experts. For us guys you have to understand the amount that is there before you put into concept of what is a lot. Mr. Isham related catching 200-300 Moorish idols at night because of the quality of the fish rather than catching them during the day which is much more work. The fish is there which is why they are able to continue to do it. You can catch any amount that you can carry and that you can sell, but the reality is you can only catch so much and sell so much. We want to make sure people only take what they need. We have divers in the room who have been fishing for over 30 years and they all agreed on these numbers. That is what you can hold safely with very little waste. Waste is not the fish dying, but need to let go the fish that might be hurt. The Hawaiian aquarium fish is the leading model in the industry because of the quality. They don't use chemicals or dynamite. They strictly use net which is what this bill is about.

Member Edlao asked whether the fish caught here go where there is a demand for unique species. Mr. Isham said they go out all over the world – Japan, mainland U.S., Canada and Europe. There are some species unique to Hawaii, but there is a difference between unique and endangered. They want unique from Hawaii because the quality is that much better than other places in the world. But, there is the cost factor. Even if you get them from Hawaii prices are more than other places. Hawaii is the standard when it comes to quality in the marine trade, salt water industry.

Member Edlao asked whether this is your livelihood. Mr. Isham acknowledged saying it is. He has a 150 gallon tank in his house. He loves his fish as much as his dog and cat. This is what he does for a living. Not one fisherman in this room is getting rich on this. It's a way to make a living. It's living off the land. It is a renewable industry. If the data showed there was a problem he would be the first to say I'm done. I'll go look for something else. Right now there is no resource issue. These rules are not presented because we have a resource issue. It is being presented because fishermen are trying to do the right thing and any potential problems. It's time. The times when you can go out and take whatever you like, we can all agree those days are over. It needs to be regulated by two sides so it can still exist and manage the resource.

Member Edlao asked whether this is strictly on Oahu. Mr. Isham confirmed that it is.

Member Morgan asked you talked about waste and new fishermen making mistakes. What are some of the types of mistakes? Mr. Isham described what he can catch, but depends what you can carry without nicking any fish and people want to buy 100% perfect fish. It's to his best interest not to overcrowd his fish to be able to sell every one. Another issue is the net could be bigger. The old time fishermen fish to order. The newer guys who don't have customers go out catch what they can and attempt to sell it after. Shrinking the net is less fish focusing on the fish they need or want. He described the learning curve which takes a couple years. The industry is good at boycotting people who fish the wrong way by not buying their fish and putting them out of business. It's for our best interest. It's based on orders and knowing what he can sell and hold which he described.

Member Goode asked what happens if you can't fill an order of 500. Mr. Isham said maybe 130 from him and buys from other reputable guys. You really have to buy to really see what get in certain areas. It's difficult to explain, but the fish is there or we wouldn't have anything in our pockets.

Member Agor said his concern is the protection of the reef and asked what they do to ensure that. Mr. Isham described swimming along the edge of the reef and placing broken pieces back on the reef to build a house for the fish. They are constantly picking up plastic bags out of the ocean. We make sure we don't damage the reef. He is comfortable with the numbers. You have to take care of what take cares of you.

A.P. (Tony) Locricchio asked whether there was an item that the public could testify on anything not on the agenda and the Chair said they've been notified by OIP (Office of Information Practices) that we can't do agenda item H-1 any more. You are welcome to write a letter to the Board.

A.P. (Tony) Locricchio testified that this industry that you are talking about...The United Nations indicated that the world temperatures will increase and aquarium fish will die in large numbers. There is a need for a multi-agency task force and he asked for this Board to put one together. He is representative of the Federated States of Micronesia. They are putting together a \$3 billion United Nations funds proposal for. An industry like this needs protection for their livelihood. There will be lost jobs due to lost funding. He is in favor of a public hearing.

Rene Umberger distributed her written testimony which she read from noting other islands like Palau values their fishes and bans fishing. She doesn't want this approved. Chair Aila pointed out that there were three storms that came through and no opportunity to harvest yellow tangs because all the finger coral was gone. He dove those areas. It wasn't the fishermen harvesting them all. They weren't there to begin with. There were some discussions about this and staff's data with Ms. Umberger.

Member Goode asked if she thinks there is a number that could be sustainable with take. Ms. Umberger thinks sustainable for the fisheries is take as much as you can without causing collapse where she cited some figures.

Chair Aila asked if your concern is the overall health of the reef how come you haven't expressed anything on the number of consumptive users that are taking the very same species of fish. Ms. Umberger said everybody has to eat and everybody has to feed their family. I would side with the fishers that say the reefs should be for home use and not for commercial. She would go with the fishers she knows. These fishes should not be used as ornaments.

Dennis Yamaguchi testified he is a fisherman of aquarium fish and read from his written testimony in support.

Chair Aila asked what the difference was between fence and hand net. Mr. Yamaguchi explained the fence is a barrier net shaped into a U or bucket where you chase the fish in. By using a small scoop net or by hand pick them off the net. With the hand net, you figure out where the fish want to go and put the net in front of them and let the fish run inside. One by one you collect the fish. He has been fishing for 40 years. After Member Edlao's questioning, Mr. Yamaguchi explained the eye of the net has an exemption for ½ to 1". There were some discussions about catching fish, the weather, not to catch fish too small, and explanation of the life cycle of the fish.

Maka'ala Ka'aumoana representing Hui Ho'omalua I Ka Aina distributed and testified from her written testimony. She had some concerns and asked to require a full EIS.

Glenn Fukuoa testified he is a commercial fisher for 40 plus years and supports this. The Chair had some questions about the numbers of orders for fish that Mr. Fukuoa said that the demand for common fish is plentiful, but they don't catch everything. There are limits which are regulated by the State. DLNR is out there patrolling.

Robert Wintner testified that he owns Snorkel Bob's and has snorkeled for 52 years referring to the vibrant reefs of Palau and that Hawaii's reefs are declining. There is a resource issue and that DAR wants the aquarium trade to go away. Also, ocean front owners and Hawaiian practitioners don't want aquarium fishing. He mentioned the coral trade and the aquarium trade bill at the Legislature. There is an issue of morals and resources and to do the right thing.

Carina Sugiyama read from her written testimony and said she agrees with implementing the rules noting that no fisher works 365 days a year.

Inga Gibson testified that she is the Hawaii State Director of The Humane Society and distributed and read from her written testimony reiterating previous testimonies on limits to catch and urged the Board to deny this. Consider putting this to all the people of Hawaii. Put a ban except for cultural or personal use.

Doug Fetterly testified that he has an interest in the marine testimony from the October 17, 2011 BLNR meeting that limits the bag limit. There is a decline in coral reefs. He reiterated previous testimonies that we can no longer fish like a 100 years ago and can't support a few individuals over the well being of a community. He asked for a full ban.

Dave Raney representing the Sierra Club testified from his written testimony asking to hold public hearings on a Statewide ban.

Kaimi Kaupiko from Miloli'i, Big Island testified as a Native Hawaiian fisherman that he is not in support. He related problems on the Big Island that his dad has faced with fishers and that all the fishes are gone in Kona.

Willie Kaupiko, a fisherman from Miloli'i, Big Island testified relating the problems he has faced with fishers and illegal boaters that don't take care of the ocean. Need take

only what you need. He suggested a maritime rule for the next generation to shut down and ban to give the fisheries a break.

Mike Nakachi distributed his written testimony and read from it asking not to approve and re-draft with a statewide ban.

Caroline Ishida representing Earth Justice distributed her written testimony and read from it. She wants something long term and sustainable.

Matthew Ross testified that he is a fish collector on Oahu, North and South shores. The fisheries have not collapsed and are healthy right now with potential for the future. He noted that this item is for Oahu and asked for approval. Mr. Ross related how long he has been in the industry and his background in the industry.

Wayne Tsujiyama testified he is an exporter of aquarium fish since 1971 and had a permit to catch and sell fish. He tells the divers what to collect.

There were some discussions on the types of fishes.

Les who is a part-time diver testified that he collects twice a month and related having to learn the hard way about this industry having been boycotted. He supported the commercial fishers and what they said about taking care of the reefs and the industry.

Jerry Isham said a total ban is not right because Oahu doesn't know the neighbor island fishing areas.

Greg Ruell read from a Dr. Telecky's written testimony in support and why fishing is in decline. Mr. Ruell is a retired navy diver and said masses of fish are gone that DAR's presentation on November 17th was a sham and that each has its own agenda. He opposes DAR.

Bob Goodwin testified in support and noting this is for Oahu. There are problems with tourists.

Melva Aila, a Native Hawaiian practitioner testified in support of these rules and noted that this is for Oahu.

There was a question by Willie Kaupiko about enforcement and the Chair said we know that is a problem where Mr. Kaupiko referred to Bill Walsh for further discussion.

There were more discussions between Mr. Miyasaka and the Board members.

Member Morgan made a motion to approve as submitted. Member Gon seconded it. All voted in favor.

Unanimously approved as submitted (Morgan, Gon)

Item D-15 Issuance of a Revocable Permit to Waikiki Community Center for Beach Activities Purposes at Duke Kahanamoku Beach, Honolulu, Oahu, Tax Map Key: (1) 2-3-37:portion of 21

Mr. Tsuji said there was a meeting with Bill Wynhoff on these RPs and said staff would take it to the Board.

Jeff Apaka representing Michael Lee asked for the Board's approval.

Unanimously approved as submitted (Morgan, Gon)

1:40 PM LUNCH BREAK

2:15 PM RECONVENED

Item D-3 Grant of Perpetual, Non-Exclusive Easement to Eric A. Knudsen Trust for Access and Utility Purposes, Po'ipu, Koloa, Kauai, Tax Map Key: (4) 2-8-014: fronting Parcel 19 (Hapa Road).

Written testimonies from Marty Kuala, Chris Moore, Wayne Rapozo of the Rapozo Kama'aina Foundation, Ryan Buhk, Jeri Di Pietro, Ted Blake, Louie Abrams of the Koloa Community Association, David Frankel of Native Hawaiian Legal Corp. and Thomas Noyes of Kauai Path, Inc. were distributed to the Board members.

Mr. Tsuji informed the Board that item D-3 is a request on Kauai for a grant of perpetual, non-exclusive easement to Eric Knudsen Trust for access and utility purposes across Hapa Road which is on the inventory of State Historic Places. SHPD (State Historic Preservation Division) take a look at this application and approved it. Previously the applicant requested to cross over at another location of Hapa Road which would have required the destruction of an existing rock wall which has some historical significance or archaeological feature. This proposal is a change to that where it would not destroy any existing rock wall and there is an opening on it. It's a relatively small easement – 20 x 100 square feet or so. There is some opposition and both sides of this issue are here to testify and counsel for both sides is here. Deputy AG Linda Chow is here.

Max Graham introduced himself as an attorney from Kauai representing the Eric A. Knudsen Trust the applicant and its trustee, Stacy Wong is present today. Also, if necessary our attorney Michael Tom who has been representing the Trust in litigation related to the project and that litigation involves the state, the county and the Trust. Mr. Blake is also present with his attorney, Mr. Frankel. Also present is Dr. Hal Hamet who prepared the archaeological inventory survey for this particular request. And, Ms. Kimi Yuen from PBR, Hawaii who is the planner on the project. Mr. Graham distributed a map and he went over the geography of the area which is the current Tax Map. To the left of the map is the ocean and that is south, north is right of the map and west is up and east is down. The area colored in green is a 50 lot subdivision which the Trust has been developing which was approved in 2009. The roads and utilities have all been

constructed. It's completed and ready to go except it needs access to Kiahuna Plantation Drive which is shown in orange. In between Kiahuna Plantation Drive and the subdivision you see in yellow is Hapa Road. Hapa Road extends north to south, mauka makai road and the yellow portion of Hapa Road is the unimproved portion of Hapa Road which is a two track dirt road which appears to have crushed coral sprinkled on some portions of the track. Hapa Road goes all the way up to the pink line and that is near the Roman Catholic Church, St. Raphael, and from that point Hapa Road is paved. The pink portion shows the paved portion of Hapa Road that goes up to Weliweli road. So the pink portion is used for vehicular traffic to get to the houses on either side and down to the church. The yellow portion is...I looked at it yesterday. It looks like its...portions at least are accessible and may be used by vehicles. But, I think it's predominately use for pedestrian purposes. Hapa Road is actually owned by the State of Hawaii. It's part of Land Court. All these lands here are in the Land Court system and so Hapa Road is designated as series of lots which are designated on the Land Court map as lots 18, 19a, 19b and 20. Where were proposing to have the easement placed is lot 19b. It's a portion of the Hapa Road lot. The applicant is asking they be granting an easement at the location of the red line shown on the map. It would directly connect the subdivision across Hapa Road with Kiahuna Plantation Drive. The blue line you see on the map is the old proposed easement location mauka easement. The applicant is no longer asking that easement be granted across Hapa Road at that location, but I want to show it on the map so you have a sense of what the previous plan was. The history of Hapa Road is there is a sign that I should also mention Hapa Road starts about 50 to a 100 feet mauka of Poipu Road where Poipu Road is the large road on the makai side of Hapa Road and the subdivision that you can see. Hapa Road starts maybe a 100 feet in and in front of it there is a driveway that goes across it and it seems like a grassed area. Hapa Road has a sign that says that it was created...established in 1891 and may have been established earlier than that for use by the Roman Catholic Church which was built in 1845. Because apparently the church has lots of boulders, rocks from that area, but needed mortar and were hauling coral from the ocean and apparently used the road to haul coral. It's maybe as early as 1845 because it is a post contact road though. And, it is a road, to emphasize that. Since the time it was created it was used for a roadway purposes for vehicles as they existed for particular years – carts, horses and later cars. Of course, for pedestrian purposes. The archaeological significance of the road aside from the fact the road is in place would be the rock walls that formally went along both sides of the road. This is all lava area in Poipu. The lava rocks were pulled up and used to run on both sides of the road and were apparently five or six courses high. Unfortunately, those rocks have been substantially altered. At this point there are segments of rock wall remaining and the segments archaeologically are described as intact walls that would be the full five or six courses high. Partially intact walls maybe have several courses, but not the full height. Foundation only and that would indicate that they would be large stones placed in the ground, but nothing more and no wall in evidence. The original application I show in blue sought to cross Hapa Road at a location where there was an intact wall which would've required removal of an intact wall. The new location proposes to cross a portion of Hapa Road that has on the lower or east side some foundation only rocks. Single rocks placed in the ground. On the west side which is the top of the map it was described as no wall in evidence. It's been removed. It does appear that the reason for

the loss of the stones is that people have literally taken them off the property. The easement area itself, the County requires a road for a subdivision of this size to be 56 feet wide so it will be approximately 56 feet wide going across the lot. The lot is 30 feet wide. Hapa Road itself is only about 10 feet wide. The actual tracks that will be crossed will be 10 feet wide. It will need to be paved and the proposal is to pave it up to the tracks on either side with asphalt. I think the County standard will be 24 feet wide and then to have the actual Hapa Road 10 foot wide right of way put in pavers or rocks that would just distinguish it to locate as a historic road.

Mr. Graham said there was an EIS originally prepared in 2006 for this project. This subdivision is part of a much larger proposed project that hasn't materialized, but at the time the EIS was prepared the proposal was to bring access to the whole project area approximately where the blue mauka entrance is shown. That was the original proposal to connect to Kiahuna Plantation Drive. The reason why Kiahuna Plantation Drive is the access road is because it's a full standard County road that goes down to Poipu road and has an improved intersection. It has turn lanes, deceleration lanes, the whole works. From a circulation point of view it makes the most sense to bring the traffic for this development into Kiahuna Plantation Drive and to have the access down to where Kiahuna Plantation Drive merges with Poipu Road. That is the reason why the connection is across Hapa Road. I know there is objection to the proposal of having vehicular traffic across Hapa Road, but Hapa Road is over a mile and a half long. Portions of it are actually used for vehicular traffic. This is the only point that would be crossed by vehicles being requested by the applicant. It seems to me that it does actually historically Hapa Road was a road. It's historically consistent and it will not substantially interfere with the plans to use Hapa Road as, if in fact if these are carried through for pedestrian and bicycle purposes. I think it's a reasonable use of that portion of Hapa Road and it's something that in the future we are going to have to deal with. We will want to increase in Hawaii the presence of trails – pedestrian trails, bikeways, but we are going to have to do it in a way that is consistent with traffic needs as well because as you can see Hapa Road extends all the way up. If you take the position that no vehicles can cross than we are creating a barrier from the eastern to western portions of Poipu in this area. It does not seem to be unreasonable under the circumstances. Also, the points raised that Mr. Frankel submitted a letter to you about why can't they just come down from the south across these two lots that are shown that are marked TMK nos. 20 and 21. First, you would have to build a road there because there is no road in place that would be adequately sized for this subdivision. Second, it would have to somehow jog to the east because if you built a road there for this subdivision you would have to create at the intersection with Poipu Road all the turn lanes, storage lanes in the same manner as it is right now at Kiahuna Plantation Drive. It would be a fairly major construction project. You would also need to go to the County Council because the ordinance they created the zoning for the subdivision has a condition 10 of Ordinance PM3179 which says there is no direct access allowed onto Poipu Road from the project property. Now there is access for these two lots because all lots are allowed access, but we would have to get the Council to agree to amend the condition in order to provide a larger access onto Poipu Road for the purposes of the subdivision. There maybe problems with doing that given that we already have another big intersection where Kiahuna Plantation Drive intersects

with Poipu Road. The County would prefer we keep the circulation system as planned which is you get onto Kiahuna Plantation Drive.

Mr. Graham said he had a couple technical points also. If the Board would consider granting this easement the Board has a standard easement document and I've asked that two provisions be amended in the standard document. The first would be to clarify that the benefited lots are all the lots in the subdivision plus the two lots that make up the remainder of this project area so that's just technical getting the right Tax Map Key numbers and the right Land Court lot numbers because these are all Land Court lots. Second, these easement documents although they are perpetual typically contain a provision that allows the State to withdraw the easement if necessary for public purposes, but if this is the only easement for this subdivision lots we can't have a provision where the State could then withdraw the easement and then all these lots are landlocked. I am asking to amend those provisions that are contained in paragraph 7 and 15 of your draft easement to say that the withdrawal would not be possible unless the State provided a substitute easement or the applicant and the grantee in that case had an alternate access that was actually constructed in place.

Board member Morgan commented that he was surprised to see the amount of controversy about this and looked relatively benign to me. I know that trails cross roads all over the place. I was surprised. As I read this stuff it seems like there is more, it is a chore what we are reading. Mr. Graham said I am going to let Mr. Frankel describe the other side of the story because there's on-going litigation over this whole matter. I think the objection is to the vehicular use of Hapa Trail. I think it's pretty much that simple. Member Morgan reiterated his comment citing the Tantalus trail system as an example, but let's hear the other side.

Member Gon asked in the EIS that was put together for the project associated with this was there an anticipation of these affects on Hapa Road and what were the statements made. Mr. Graham said he would ask Ms. Yuen to come up to answer those questions because she helped prepare the EIS, but the EIS was written for a project which has as one of its entrances an access through Hapa Road and on to Kiahuna Plantation Drive. That was contemplated in the EIS.

Member Morgan asked whether he was talking about the blue (portion). Kimi Yuen (PBR Hawaii) acknowledged with a yes saying that the blue was originally labeled as the main entry to project and it also describes including other pedestrian pathways to the project that would meet with Hapa Road and so there would be other breaches. I don't know whether it would make sense for them to see the original master plan that was submitted as part of the EIS, but there are other points on the map where we had connections to Hapa Road because the thought was that if you really want to preserve the kind of lifestyle where you can walk and enjoy you would want more connections because it's such a long and near project. At the time it was understood that it was the County who owned the road and they put the condition to improve Hapa Road as a pedestrian, bikeway with emergency access for vehicles as needed because of the circulation issues of the network throughout the area. That is what we are exactly doing

working with the County in designing what those breaches were and in the EIS we described the project as a very conceptual layout right now. The detailed subdivision wasn't worked out at that time. We did show the main entry at Kiahuna Plantation Road and it did show a crossing of Hapa Road and that the details would be continued to work through as the design got developed with the PD, the County and other relevant agencies.

Member Gon asked at the time of the preparation of the EIS was there much community input with regard to those breaches on Hapa Road. Ms. Yuen said we never received a letter commenting on problems with the breaches on Hapa Road. In the EIS we started the process in the middle of July 2005 was when the EIS prep notice was submitted and throughout the final EIS which included Land Use Commission hearings to get it approved is accepted by the LUC in November of 2006. It's a year and a half and we really never got any comments about Hapa Road, problems with the breaches at that time and we're sure we would've addressed them if they had come up at those times. But, the idea was because the layout wasn't worked out yet you didn't know exactly where and what the condition of Hapa Road would've been at those particular spots so you worked to as the design was developed through the various agencies.

Member Goode asked the blue line is the alignment. Ms. Yuen said the eastern wall is relatively intact in that location so the idea was to go to a location where the walls were in such a state that you would not have to compromise a nice section of the wall.

Member Goode asked the mauka lot was also owned by the trust. Ms. Yuen and Mr. Graham acknowledged saying yes. Member Goode asked at one point you thought Hapa Road was owned by the County. Ms. Yuen said yes. I remember we checked with the State that it wasn't the County's and the County throughout all their documents their ordinances to include the land uses they had always maintained that was their road and these are the things they required. They had put the conditions on the land to make these improvements and so forth and so we were working with the County. Member Goode asked so at that point you were working with the County. It sounds like the subdivision has been built. Mr. Graham confirmed that. Member Goode said so there must have been access to Kiahuna Plantation Road. It's unusual to have a subdivision built and then come in for an access easement after the fact. Mr. Graham said the thought was it was the County so the County said fine. You can use the County road for access to Kiahuna Plantation Drive. No problem. Approve the subdivision. After the lawsuit was filed was it discovered and the lawsuit was filed shortly after the subdivision approval so the subdivision was January 2009. Lawsuit filed in March of 2009 and then it was discovered the ownership was with the State and this is not one of those roads in limbo because it's Land Court and so Land Court determines who the owner is and it's clear that the State is the owner of this lot. There were some comments between Ms. Yuen and Mr. Tsuji. Member Goode said staff could grant an easement if we so desire. Mr. Tsuji said the Attorney General said. I don't agree with her. Mr. Graham said he will correct himself that the Land Court thinks the State owns it.

David Frankel representing Ted Blake testified that his client will want to testify, but he wanted to address specific issues. I want to be very clear. Staff's submittal discussion

mentioned a previous approval. This is a very poor distinction. SHPD granted an approval to destroy a portion of a historic wall, however, no approval was granted for an easement to cross that length so that blue line area has not received all the approvals necessary to be built. The comparison is not this proposal and the blue line area because the blue line area hasn't been approved either. They don't have the easement. The comparison needs to be this easement, this area or one from Poipu Road on their property not using State property at all. That is the alternatives and now needs to be considered. The other response I want to make is the reason there were no comments for the community on the EIS regarding the breaching of Hapa Trail is because the EIS says repeatedly that Hapa Trail would be preserved. They say it over and over again. The only thing they point to is in this hundreds of pages of document and one map. One map only. They gave you a big version. You would need a magnifying glass to see where they are claiming this is the main entrance across Hapa Road. But everywhere else on this EIS it says Hapa Trail is going to be preserved. So why wouldn't the community have anything to say about Hapa Trail when they've been assured that the trail would be preserved.

Mr. Frankel said I want to make five substantive points. Firstly, this is an issue of great concern to folks in Koloa and this decision on issue should take place on Kaua'i. You folks used to travel to the neighbor islands to make decisions of important issues there. This is an example of one. Secondly, Knudsen has alternative access. They do not need to use State land. This map from the EIS, they show a road coming through the tennis court property connecting to their internal road. You guys don't have a copy of that map and passed his copy of the map around. You'll see little dotted lines of the tennis court road connecting to this internal road. There is another road further beyond that shown connecting directly to Poipu Road. They own property directly adjacent and on a highway. They do not need access through State land. They don't need it. The only reason they want it is to save themselves money cause then they would have to put a 25 foot driveway/road whatever you want to call it on their property and they will have less economic value from their property. So we the State should sacrifice so Knudsen can make more money. It doesn't make any sense. Ordinance 7139 has a condition. Condition 10 which they miss-read. Condition 10 says individual lot access. For example the 49 individual lots creating the subdivision, all 49 lots can't have direct access onto a highway. It's going to be nuts. Traffic would be a nightmare citing Kalaniana'ole Highway with all these driveways and they don't want that. But that doesn't mean they can't have one access road that connects to the whole subdivision to Poipu Road. In fact, they already have one. It goes to the tennis court and all you have to do is continue that road up mauka as they depicted on that color map that is coming around to you. So why not use that as the access rather than asking the State to use State land.

Mr. Frankel testified more contexts you need to know. Knudsen is responsible for the destruction of over a hundred history sites. First example Hapa Trail, we know this is a significant historic site. Not just the walls, but the entire path. Knudsen's archaeologist said it's a significant historic site. On October 21, 2004, SHPD received a copy of Interim Protection Plan for Knudsen's project. The plan identifies 30 significant historic

sites including Hapa Trail. Their plan called for a buffer to be marked by 4 inch colored plastic fencing. The plan said at no time should construction work take place within the buffer zone. This buffer zone 30 feet, no - 50 feet. Melanie Chinen says hey you haven't said what the buffer zone is. It is suppose to be 50 feet. Hal Hamet testifies for the Land Use Commission in 2007 and repeatedly talks about the need for 50 foot buffer and there is going to be orange fencing up to protect these historic sites. The record is replete with these references. In May 2007, SHPD writes to Knudsen to confirm whether they completed flagging all the remaining historic sites. It was SHPD's understanding that Goodfellow Brothers was to install protective plastic fencing around sites to be preserved or data recovered. The fencing should have been installed around the sites and their approved buffers, but on February 2009 after the subdivision approval Knudsen's contractor drives their big heavy machinery down Hapa Road, takes a left and runs right through the wall. No orange fencing is up. No buffer. SHPD itself has taken no action. No enforcement action to that violation. Nancy Mann (SHPD) came on site after that had occurred and observed the restoration work that occurred, but there was no question the wall was damaged. Ted Blake was there and saw this occur. They engage in construction work within 50 feet of a historic site, they in engage in it before putting in the protective fencing up and after they put the protective fencing up it was right along the wall, right next to the wall and not 50 feet from it. They violated their own promise. This isn't the only example of their (Knudsen) disregard for historic sites. Ordinance 3179 that has the famous condition 10 also has a condition 6 and it says no site identified in the report, archaeological and biological survey of the proposed Kiahuna Golf Course Village area, Koloa which is this area shall be graded, grubbed, bulldozed or in anyway destroyed unless in accordance with a plan mutually agreed upon by the applicant and the archaeologist that's been prepared whereby the archaeological salvage will be accomplished by means of coordinating any grading, grubbing or similar work by the applicant with archaeological salvage. In addition, in 1991 a Data Recovery Preservation Plan prepared by Hal Hamet and this preservation plan calls for site 966 to be preserved in total. Those are the same sites discussed in Ordinance PM 31-79. Nevertheless, about 18 historic sites were graded, grubbed, bulldozed or destroyed without plan or authorization including substantial portions of the historic site 966. My testimony includes the diagram that shows all these historic sites that were bulldozed, grubbed, graded or destroyed that came from Hal Hamet's report. Before this destruction the deputy for Historic Preservation concluded we've lost a significant part of the history of Koloa. Now given this conduct the destruction of a portion of the walls of Hapa Trail, the destruction of 18 historic sites why are we going to give them the privilege of using State land which they don't even need. Why reward bad conduct? It's bad enough that SHPD has taken no serious action in response to these violations. A slap on the wrist here, nothing really meaningful, but why let them further alter a trail? Why alter an historic site when they don't need to?

Mr. Frankel said next major point I would like to make. Granting an easement would fundamentally alter the Hapa Trail experience. It is true there are many trails across the State that crosses roads - enough already. Why can't we preserve what we have? There is no reason this trail needs to be bisected. This trail has been identified by the community as a signature component of the Koloa/Poipu area circulation plan. It is to be

preserved for pedestrians and bicyclists. Wouldn't it be great if your child could bicycle in an area safely without cars going from one place to another without worrying about cars coming across? That is what Hapa Trail offers now and for the future. Why ruin that experience? There is no need to.

Mr. Frankel said finally, granting an easement would violate Chapter 343. We are already in litigation with Knudsen about a number of related issues. The EIS that was done in November 2006 cannot be relied upon to grant this easement. First, that EIS states explicitly that Hapa is an unimproved County roadway. We know that's false. We also know the deputy for Historic Preservation had testified under oath that if she had known that the Hapa Trail was owned by the State her whole analysis about the impact of this proposal would've been completely different. Second, the EIS itself does not contemplate the use of Hapa Trail for vehicular access to the subdivision particularly at this location. Thus HRS, Chapter 343 has not been complied with.

Member Gon asked what is the general amount of pedestrian and bicycle use of Hapa Trail right now. Mr. Frankel said Ted will tell you. Teddy Blake said on any given day probably...you got a lot of people walking in the morning and a lot in the afternoon and tourists in between. As far as the count maybe 20 or 30, but I don't have an accurate count. Member Gon asked how long is the unpaved yellow portion. Mr. Blake said 1.2 miles.

Ted Kawahinehelelani Blake introduced himself and testified from his written testimony that he lives in Koloa most of his life. My father's name was Hartwell Kawahinehelelani Blake and he lived in Koloa. He was the chairman under the mayor, commander for the National Guard. My grandfather was Henry Hartwell Kawahinehelelani Blake – sheriff, judge and tax collector of Koloa. My great, great, great grandmother was Kamanolau who lived her life in Koloa. Her half brother was Ali'i Nui Kamuali'i. My family goes back at least 65 generations. I feel it's inherent upon me to maintain the stewardship from the place that I was born and raised. I have never testified before a Board where I feel the conviction I feel right now. I would like to start off with some of the comments Mr. Graham made. Hapa Trail is a 30 foot easement from the unimproved portion starting from St. Raphael's all the way down to where the placard is all the way down to Poipu Road. Hapa's walls were intact as late as 1987 on both sides. Since that time prior to that the land on either side of Hapa approximately 480 acres was reclassified at the Land Use Commission. From ag open to resort/residential and commercial. It also had a stipulation for the land owner which they agreed to perpetuate, preserve and maintain in perpetuity Hapa Trail and that was in the early 1980s. As late as 2008, not one finger was lifted to take care of Hapa. The easement was covered with koa haole, aggressive cactus, guinea grass and whatever other shrubs were there. Because of the developments adjacent to Hapa we felt if we didn't take ownership as the community of Hapa that it would go by the wayside. And what Kimi Yuen said is probably right. Nobody answered the EIS calls back in 2005. But, as Mr. Agor can attest in 2005 we had 14 developments going on in Koloa. Eleven of which were down in Poipu in some form of permitting. For a community keeping track of each single one of them voluntarily it's very difficult especially one that isn't on the Board yet. Yes, we may have been remiss in

not following through, but when you're dealing with all these developments going on. You know you come through the tunnel of trees once you hit Koloa you go through a tunnel of dust fences and that stayed up for two years all the way down to Poipu. We had a tidal wave of development going on. The rocks from Hapa Trail on the walls were there but from 1987 they slowly disappeared. It wasn't my kuleana to take care of that. The kuleana laid with the Knudsen Trust. We have since then in April of 2008 we spent three months going six days a week clearing Hapa by hand. We made it passable and since then every time we want to go back and clean we have to go for a right of entry permit. Our money, our time, our tools, our gas – it's not a problem. Hapa Trail is the only connection from Koloa to Poipu. It's the only thing we have in Koloa. In the 1970s we gave our entire coastline to resort development to ensure a place for our children to come back with high paying jobs. That's happened. We never saw the dark side of development. We can't point fingers at anybody, but we are trying to make corrections right now. In 1983, Mr. Blake pointed out on larger displayed maps, 18% of all the intact wahi pana in the State of Hawaii was right here. These were preserved. You had sites here that are totally destroyed. Sites here that were completely destroyed and all these were already logged by Hal Hamet. This is that same area today. Of the 780 archaeological sites, we have one here, one here, one here, and a couple of them there. That is a crying shame for a State whose Hawaii Tourism Authority says heritage tourism is where we put our money. Now we are putting in golf courses. We are not against development. Not at all, but not at the expense of our culture and history which is what draws people here. You don't go to Egypt for sun and fun. You go to Egypt to learn the history and see how the people live their history which is the same reason why they come to Hawaii.

Member Morgan asked if he could point out Hapa Road on the map and Mr. Blake did. On the question of Ordinance TM10 no more breaching onto...no more access to Poipu Road, this is where you come out of Poipu Road now. In 2006, this was allowed. Same parcel. In 2008, this one was allowed same parcel. (Showed some photos and pointed on the map.) Knudsen was going from here all the way to over here. They got all of this road front is on Poipu Road. Why are we so adamant? Look at what you got. Why do you have to take this away? That is just on Hapa Road. Once we started working on Hapa Road we found out the kind of history Hapa Road has. Hapa Road probably started before St. Raphael's. It was used by guys who fitted ships. Hanakapiai Bay was the first royal port of entry in Kauai. Hanakapiai is called Koloa Landing. This area is considered by the U.S. Geological Service totally unsuitable for agriculture. Yet, for 500 years the productive agricultural enterprise going for the whole field system that this area supplied the Forty-niners in the 1850s with all this sweet potatoes all to California. How is that? Hawaii supplying California with food and supplied the North during the Civil War with all it's sugar. Then we found out more about it. At the bottom of Hapa Trail, a hula mound called Pa'u o Laka. We couldn't for the life of us figure out why Pa'u o Laka was named. Why the skirts of Laka? What has Koloa have to do with Laka? The Lohea Kumu at the time in Kauai was Keahiwahine of Wahiawa. She taught hula at Pa'u o Laka. She had two very famous students. One was Harriet Lanihau Makekau and the other was Mary Kawena Pukui. Harriet was hanaied by her grand aunt. She had a collection and the Kahuna said take this la'au and change her name to Io. She took her

aunty's last name and became Iolani Luahine. At Koloa, at the very top of Haupu Mountain there is a heiau called Keolewa dedicated to Laka. There is a story about Laka descending on Haupu Ridge giving the hula to the Hawaiians there. We have a little bit more research to do checking chants and other ancient records to find the connection. What Hapa does is opens the whole area history and post contact history that is a microcosm of everything that has happened in Hawaii right in one place and that is where sugar started. To take this away for the good of just a small group of people away from the rest of the people from Kauai and Hawaii that's a crime, especially when you have another way to get in there. That one is not going to cost you a dime. There are so many things we could talk about that would be germane to this, but probably not because it's no right on the subject. I think this hearing should be deferred. We can get more people from Kauai. It took \$280 to fly over here today plus taking my whole day up. There are more people who want to be here, but it is quite a sacrifice to do this. If you don't deny this today I would ask that you at least talk to get more people from Kauai to talk about this. This is a very passionate subject in Koloa. We just got a designation to the State scenic advisors. Hapa is a big part of this. It's going to benefit the Knudsens like it benefits us. The Knudsens do good things, but this is not one of them. The proposal they have is not a good thing. It's not a good thing for us. It is not a good thing for the State. It is not a good thing for the Hawaiians. I sincerely hope you take this into consideration when you make your decision.

Member Agor commented to Ted that this is breaching or crossing Hapa Road some 2500 square feet. I went and talked to the County attorneys I think Wednesday I was talking to some planning commissioners from that Department and they all feel that this does not take away from what you view Hapa Road being important to the Hawaiian culture and important to Poipu. It's been vetted and they all concur with staff's recommendation. Personally, I think we can have both parties co-exist and I don't feel like it's taking away from your culture. You can still do the things you want to do and in the future when you guys have programs to foster the trail better I'm sure the Knudsen group is going to step up and help out.

Mr. Blake said I've been toiling for three (3) years and they haven't bought us one gallon of gasoline yet. I talked to two commissioners and I would name them if you like that don't have your point of view. The mayor called me last night which surprised me to talk about this. This is not just Hawaiian culture. This is for the economic good of Koloa. I am looking at the whole picture and not just specifically zeroing down to one specific party or people. With all due respect I beg to differ about that because I could come up with equal amount of people and three times as much that differ in opinions from what you got from the attorneys and from the planning commissioners.

Member Agor asked so you honestly think crossing this at this point just ruins the whole concept. Mr. Blake said well, I tell you what, yes I do. Ambience has a lot to do with it. You can drive through Waikiki and if Aulani is right there I don't care how good they make it. You still got to go through Waikiki. You still got to go through Pearl City. This is the only thing the community of Koloa has with all the resort development that is going on. And build up; everything that has been permitted so far is going to be 4000

houses which exceeds the population of Koloa and what do we have to hold on to. To show the people what life is like. What are the local mores in this place? Why did you come here? There is access there; there is a lot of access. They even have paved stub outs going that way now. Why have the paved stub outs if they plan on going out Hapa Road. There are paved stub outs by the tennis courts which Mr. Blake pointed out on the map. They have paved stub outs further east going out to Poipu Road. Why? The master plan that Ms. Yuen worked on shows four or five breaches. They are going to come back and say there is going to be more development up here. Their master plan showed them doing their own road up to Weliweli Road. This, of course, is much cheaper. We have sacrificed and given enough for the bottom line. To say let us say we all share in this and I feel very, very strongly about this. I would feel up this room with more guys that we have today 10 times over that feel just as strongly about it. These guys aren't just yawning about it. These guys have thought about it.

Member Agor asked and they've showed up at the planning hearings and you guys weren't successful with stopping this at the county level. Mr. Blake said they've showed up. The county engineer told us at that time I will give Knudsen three options. When they come back and tell us those three options are not good then we will decide. One week later they are on the planning docket for final subdivision approval. January 13 where it was in December when he told them that they got it on tape. It is just not the right thing to do. We lose more than we gain. Who gains from this? Who gains from the breaching of Hapa? He questions whether he would gain as a citizen, as a kanaka maoli, or as a community member of Koloa? Absolutely not. Whose kuleana was it to protect those stones there? As Max said you only got niho stones in there right now, but the niho stones gives us the ability to put back. The State won't even grant us a permit to allow us to rebuild the walls. We got 3600 cubic yards of rock in stockpile by St. Raphael's ready to take to Hapa to rebuild the walls. We have volunteers ready to do the work. Yet we hear about an easement going over Hapa and we can't even rebuild the walls there. Or something that to the community is more precious every day. You can always say 10 years ago they didn't know anything about this and that's true. Ask them how they feel about it today. Ask them where their pride is today. It's a big difference and you can't hold that against it. It's not an easy thing following the development. When was the EIS? 2005 and what is today? In 2005 you're not worrying about an EIS, but today it comes out and you worry about an EIS. We have the chance to right the wrong. Correct it. We're not killing the project. In fact, the blue line you see that stub out goes right to Hapa wall. Ask the developer if he knows where the boundary of Hapa wall is. Hapa is a 30 foot easement. Where the stone walls are it is only 16 feet. You got either 7 feet on either side or 14 feet on either side. Yet the original comes right up to the wall. (Pointing to the map.) It maybe on Hapa Road right now. You cannot rule on this today. There are too many things. It's just digging a deeper hole. Even if the County made a mistake you don't correct it by glossing over it. We've learned that many times in America.

Member Gon asked whether this was the first easement proposal across Hapa Road or are there existing easements. Mr. Blake pointed out two unauthorized breaches to go onto the Knudsen property. Member Gon clarified is this the first proposal for an

authorization of an easement across Hapa Road. Mr. Blake confirmed that by saying yes. Member Gon asked so every where else from Poipu Road to where it starts being paved there are no other road crossings. Mr. Blake going over the map said Hapa in its entirety the unapproved portion is 1.2 miles. Member Goode asked if it was less than half a mile for the paved portion looking at the picture. Do you know when it was paved? Mr. Blake said I must have been really young because that was the short cut to Poipu. We used to make rubbish and break bottles without our family knowing and then get to Poipu. People used to drive on that because to get out of traffic as late as the late 1980s. The reason Max couldn't get on there is because the latest rock robbery we had was August 17, 2011 – 15 cubic yards. We reported that immediately to DOCARE, Francis Mission, reported it to the Police Department, the investigation lagged and its back on track right now. So we were unauthorized by taking big stones and blocking up the way. Now you got to walk. You like take rocks bring your wheelbarrow. We caught them red handed. We just didn't see them putting them in the truck which would've been theft. And, when my friend Carlos and I started cleaning that in April the object was to get more people there and we got more of the community involved. Now on every Plantation Days a Hapa walk leads the festivities. Prior to 2008, we had 50, 60 guys. This year we had 325, the year before that we had 250. We take students from Stanford University, Kauai Community College, even the Society of Hawaiian Archaeologists to tour the area, numerous halau, numerous community groups we take down to Hapa and talk to them because it's right in the middle of the Koloa Field System, the most unique field system in all of Polynesia and the only irrigated system on a bed of flat pahoehoe. This is an amazing place. We've got more history. If you look at the history of Koloa you wonder to yourself why didn't the tourist industry get behind this and learn more about it. This is the real deal Polynesian Cultural Center. They can walk around Poipu for two days without their car and spend all their money with a smile on their face and a smile on our face.

Stacy Wong, Trustee for the Knudsen Trust testified that he would like to share some historical perspective on this project. It's been over nine (9) years where the trust has tried very hard to follow all the rules working with all the different agencies – state, county and even the federal people. We did the EIS the way we were supposed to. We did the master planning like we're supposed to. The County strongly encouraged us to cross Hapa Road because they wanted general circulation. Hapa Road was never designated a bike and pedestrian pathway only. In the condition it says bike and pedestrian with emergency vehicle access. And, with working with the head of the Public Works Department he said if it meets the standards for vehicular it's going to be a very wide, very heavy road even though it is primarily for bike and pedestrian because you got to be able to handle a fire truck. That was never implemented luckily because we found out it was a State road, but I want to point out just a couple of things. It's my understanding, like Mr. Blake said the mayor called him regarding this. The mayor called me, too. He reiterated that he fully supports the grant of our easement that he tried to talk to Ted Blake and Ted would not be supportive of what the Mayor wanted. Another thing a comment was made by one of you (the Board members) that trails and roads that trails and roads cross each other worldwide and I've seen them all over the world and they work. You don't destroy the integrity of a trail or a road for that matter

by just having a crossing. Another is the simple alternative of crossing the tennis club land. The Trust is an owner of that land, but there are seven (7) other owners of that land that the Trust does not control it. The challenges are very problematic in addition to the additional costs. One more thing to keep in mind is that the little red line that shows the crossing that is the entire length of the access road that we will build if we get the grant of easement, but we only cross 30 feet of that and our pavement is 24 feet wide. The amount of pavement that will be actually on top of Hapa Road and we are happy to put in pavers to delineate to acknowledge that this is a historic road is 720 square feet. Mr. Blake and Mr. Frankel commented about why they didn't put in EIS comments. We went through all of the procedures for the EIS and we got a lot of comments. None of them related to Hapa Road. People sent in comments about birds, drainage, traffic and this and that, but there was nothing about Hapa Road. We had a very extensive traffic impact assessment report done by ATA that covered the entire Poipu and Koloa area that was not required, but I wanted to see the larger affects of this project and all the other projects. The whole crossing of Hapa Road by a car only became an issue within the last couple years. I don't understand the motivation for trying to kill this project, but it's there.

Chair Aila asked but is it possible that you didn't receive any input relative or regarding to the impact statement is because the statement that was in there that Hapa Road is going to be protected. Mr. Wong said that statement was totally taken out of context. If you read the EIS it talks about where we will be crossing Hapa Road and that we will do mitigation measures as appropriate as approved by SHPD (State Historic Preservation Division). We have approvals. If you look at the blue access we did get approvals by SHPD to do that. We shifted to the read access because there were no walls there. The other thing not pointed out is that the area where the red is there is large Department of Water waterline under that. That whole area was ripped up and a line put in there many, many years ago. DUW has no easement from the Knudsen Trust to do this because it cuts right through the Knudsen Trust land. The other thing is on the mauka edge of this red mark was a railroad berm that carried sugar from the Koloa Mill to Koloa Landing for a very, very long time. For a long time there is evidence of large vehicles crossing Hapa Road. I don't understand. I understand the desire for pedestrian and bike pathways, but to the exclusion of all vehicles make no sense to me at all because it just wouldn't work. It wouldn't work in this world.

Member Agor asked the pending law suit...Mr. Wong said yes. There is an appeal. Mr. Blake is the plaintiff. Member Agor asked would the result of that appeal be the final decision on whether this is a go or not. Deputy AG Linda Chow said maybe it would be better answer because I represent you in that law suit. No. The result of that would probably not be the final decision on this issue. Member Goode asked why wouldn't it be. Ms. Chow said because the dismissal of the Circuit Court Judge on the issue of rightness. We argued that claim was not right because the Knudsen Trust did not have all the approvals they needed, all the governmental approvals meaning this easement to cross State land to get access to their property and as such the claim was not right. The judge agreed and said that Knudsen did not have jurisdiction and dismissed the case. That decision is in the box still. Arguably even if it's reversed we would just send it back

down to the court. Member Goode asked and they are appealing the client commission decision to file the subdivision. Ms. Chow said it's a little more complicated. What it is the law suite was about there were claims some of it regarding the decision on the subdivision application, some of it on the historic review by SHPD and that is how we're involved. Some of it is the Lucas Trust Group for claims of family properties.

Member Edlao commented that your master plan had other stub outs at Hapa Road. Mr. Wong said under our master plan the blue crossing was going to be our only vehicular crossing. The other stub outs was from our internal roads and sidewalks to get to Hapa Road with sidewalk paths to support biking and pedestrian access. Member Edlao asked so you would breach the walls in that area. Mr. Wong said there are not walls everywhere. What we would've done was look to see where we would have the least amount of impact, but we did get approval from SHPD to cross in the blue area which does have an intact eastern wall and there is no wall on the western side.

Member Edlao asked the access for the red mark is just to cross Hapa Road to get to the subdivision and not use Hapa road for vehicular traffic. Mr. Wong said no, the red part where we cross Hapa Road would be a vehicular connection. Member Edlao asked just to cross not to go on (to Hapa Road). Mr. Wong said no, not to head north and south. Not at all. Member Edlao asked and the other stub outs you mentioned are pedestrian access to Hapa Road. It will be in areas where walls have already been breached. Mr. Wong said they are strictly pedestrian that a car would not be able to drive down there. We have a Master Plan. We did not inventory every little foot of wall or not wall, but because these pathways are along lot lines which have not been subdivided yet. It would be very simple to shift the lot line a little bit and get the access where there is less impact to the rock walls. Member Edlao asked when that happens would you have to come back to the State to get that pedestrian access done. Mr. Wong said no. I don't think we'll be crossing Hapa Road from a practical point of view. Member Edlao asked being it is a State road you got the stub outs and yeah you may say you may not breach it (the wall) for vehicular, but pedestrians. Again, you are going through that area. Access is access. So would you need to come back to us? Member Goode said they would just improve right up to the boundary line and be done with it. If they had actually improved the area by removing more of the wall they may be at risk. Member Edlao said it sounds like they are making access "to." Mr. Wong said our property line is the same as the eastern side of Hapa Road. We wouldn't necessarily ask to improve Hapa Road. We might want to run our sidewalk up to our property line and a little bit of landscaping on either side. Member Agor asked that is for pedestrians. The public can access Hapa Trail as a pedestrian ...Mr. Wong said what I didn't want was a line of house lots blocking people from getting to Hapa Road if they wanted to use it and was forced to got several hundred feet on either end. We just thought having regular access would be a good thing. Member Edlao asked what would happen if somebody walks down Hapa Road comes to that area and goes to your subdivision. Will there be a sign posted. Mr. Wong said there is no restriction on that. We are not a gated community. It's not designed to make people feel like they are not welcomed to walk around.

3:30 PM Chair Aila announced that he has to leave to take a conference call and turned the anvil over to Board member Agor.

Member Agor asked the Koloa Community Association made a comment whether should we approve this access that we should stipulate that no future access would be allowed over the trail. Mr. Wong asked in other areas. Member Agor acknowledged that, in other areas. Is that a problem in the future? Mr. Wong said it limits any kind of planning flexibility, but if it came down to just that one point and I have approval in hand with that stipulation I would agree to it.

Member Edlao asked if that is the case your recommendations for the change in Section 15 is out the window. Mr. Wong asked what is Section 15. Member Edlao said where you guys said if the State takes that easement away from you guys then we would have to give you another easement access to Hapa Road in another area. Something like that. Mr. Tsuji said that was a long time ago. Mr. Wong said I guess if you're saying I can keep this easement and not give it to me take my right to cross anywhere else and then subsequently take away the easement you just granted me. That would be a scary thing. No homeowner would want to buy a lot that has that kind of a caveat. Member Edlao said that is why he is asking the question.

Member Agor asked if we approve this easement and make a stipulation that is the only crossing of Hapa Road your ok with it. Mr. Wong said yes.

Member Goode asked if the County says in the future we need another crossing for emergency purposes for making sure our fire trucks has a way to get out. Mr. Wong said it's a State Road. I would tell the County to talk to you guys.

Member Agor said I think it would give the community a sense of comfort that this doesn't set precedence for breaching Hapa Road in other areas. Mr. Wong responded saying yeah. Our plan was one crossing and that was primarily for traffic circulation as part of the Master Plan. Our Master Plan doesn't show any other crossings so I'd be willing to agree that we will not seek another crossing.

Mr. Blake told the Board the stub outs that I talked about they are not a regular road. They come out right here right down to this place right here and there is one right here (pointing them out on the map). That is not for pedestrian, that's for cars. What Mr. Wong is saying is the map shows pedestrian breaches go into the wall. They want to take out a portion of the wall so they can walk. You got to nail it down. Be specific on it. We haven't been specific before and we found out that we should have been more specific and being nice and not being specific. He has got breaches coming up all along. There is another portion up here, 14 acres that they have planned for a subdivision also. It's zoned R6 or R10, 64 lots breaching into Hapa. Their Master Plan said they would take the road all the way up to here. That's changed because it's too much money. The easiest we can where we can get it. If you follow what the community says it has to be very, very specific. One breach that's it, you give up rights to everything else. Including the breaches here because we don't want to rebuild the walls that were there and they were supposed to be taking care of it. Those walls are gone. We are going to do this at

our own expense. We are not putting it out like we'll do 10 feet give us 20 years to build 2000 linear feet is what they got from the County. He thought 20 years to do 2000 linear feet. We are going to do that on our. We'll get volunteers to do it. Member Edlao asked basically what you are saying then a pedestrian access you're opposed to that. Mr. Blake explained I'm just clarifying the point he (Mr. Wong) was making there is no more breaches. I saw a Master Plan where they breached it by roads 4 times. I've seen the Master Plan where they've got pedestrian breaches going into there. I didn't draw that. That came from them (Knudsen Trust). That came from public records we got from the Planning Department. This is not us against Knudsen this is to get something to... Member Edlao asked you mentioned you guys are going to repair those walls. Mr. Blake replied yes and said we have 3600 cubic yards in a stock pile right by St. Raphael Church on land released from Grove Farm specifically to repair the walls.

Member Edlao asked if this goes forward allowing them this one access then you and your guys will go in and fix all the busted walls. Mr. Blake said hopefully by then the Attorney General will say its ok for them to get a permit. That is what has been holding us back. This litigation is holding us back. Where the breach is right now say someone comes tooling down Hapa Trail on a bike. He goes over the berm down and here comes a car coming up. What happens? You think the bicycle driver is going to hurt the car driver? Member Edlao said you are talking if they do other breaches for vehicular and they are saying they are not going to do anymore vehicular, but they are talking about probably just for pedestrians but you are even opposed to pedestrians. Mr. Blake said all I'm making a point is they said they aren't going to breach anything. They are breaching it. Member Morgan said he doesn't think he is opposing the additional... Mr. Blake said it's the language. It's got to be very specific. Member Goode asked you're ok with the additional pedestrian breaches down the road. Mr. Blake said yes, but be specific. Don't try to snow over something. Say what it is. Member Edlao summarized this one easement and allow pedestrian crossing at areas that are already breached and not to create anymore. Mr. Blake said where there is unauthorized breaches we are going to repair them. Member Agor said we don't need to go there. Member Edlao said we just want to make sure you guys are all happy. Mr. Blake said like I said I think we should defer this so we can get more input from people who want to come and testify, but can't. I tried to get the video conferencing, but it's impossible because it's not set-up. We got people who want to talk about this. They are sensible, outstanding citizens.

Mr. Frankel said on behalf of Mr. Blake we would like to request a contested case hearing. We understand the Attorney General's position with respect to Shawa and we think it's incorrect, over broad interpretation and we are going to make that request today with a contested case hearing on this specific issue.

Mr. Tsuji said just to make sure the Board understands some of the legal issues that were brought up. On the paragraph that Max had talked about that they are asking for a change that is typically in all of our leases as well as easements. In the event we might need to withdraw it, if the Board remembers the litigation on Saddle Road we had to make withdrawals from the leases because it was required by the Federal agency. Except in this case as I expressed to counsel I think the likelihood of that happening because from my

understanding of the land area and holdings in this area it's basically we acquired this property from private and that is the only thing we own. It's the road. I wasn't going to get into this because I think it's a non-issue for this submittal except it was asked by Member Gon whether this is the only authorized crossing for vehicular traffic and I think the answer is "no" from the BLNR. I don't know if it's correct whether any other government agency may have authorized vehicular crossings. I raise that because I don't know the long history on this one, but I heard earlier the planner from PBR indicate that everyone thought it was a County road and I took that to mean even the County understood that was a County road. And as I said earlier this brings me to my next point, I'm bringing this before the Board because I was told by the Attorney General's office that we hold the title and we have the authority to grant it. I raised the question whether we had the authority to grant it because I understood vehicular traffic goes on to this road regardless of title. We may hold the title, the fee ownership, but regardless of title under Chapter 2648, HRS, the highways statute the Board of Land and Natural Resources does not hold public roads under its jurisdiction. It is either the Department of Transportation as a State Highway or the County. I heard other people may have been raising or asked certain requests of authorization for building the road or repairing the rock wall. I don't know who he asked, but if it was the Land Division I'm sure the response up until this point would've been Hapa Road is not under our jurisdiction because we've been told over and over from the Attorney General's office we have no jurisdiction over roads that are used for public vehicular traffic by operation of law regardless of title. On a related matter that will come up this afternoon on a later item similarly I was told by the AG office regardless if it was Land Court or regular system, private property let's say a shoreline property where the law in Hawaii by the Hawaii Supreme Court and many other cases since that original case had repeatedly said seaward of the shoreline zone by the State to hold for the public benefit, etc. The opinion from the Attorney General that we got and we took the position in litigation in Gold Coast as well as how I will be treating this afternoon, regardless if it's Land Court or not it doesn't matter if it's seaward of the shoreline or secondly outside of the earliest recorded boundary which would've been during the original supposition for the property being sold. It is then on State land and that was regardless whether it was Land Court or not. There were a lot of properties where Land Court the private landowner is out on the ocean and our Attorney General is saying regardless because Hawaii Supreme Court has said we have seaward of the shoreline it is now held by the State why I think that is relevant is because it's regardless of Land Court or not. I heard Land Court being mentioned here. Regardless of Land Court or not and regardless of a deed what we were repeatedly told is pursuant to Chapter 264, if it's use for public vehicular access a public road like Hapa Road, if that's the case I was told it was used for public vehicular traffic that it was not under the jurisdiction of the BLNR. It maybe under somebody else's jurisdiction, but not ours. I say that because the issue came up about whether the Land Court, the deed and apparently the State acquired Hapa Road from private.

Member Morgan asked an appropriate motion would be to approve staff's recommendation subject to the extent of our authority. Mr. Tsuji said and again, I'm relying upon the Deputy Attorney General saying we have the authority to do it. Member Morgan agreed. Member Agor asked whether Hapa Road was designated as a historic

asset and if it is...Ms. Chow said no, it is on the State inventory of Historic Properties, but it is not on the Register of Historic Sites – the National or the State Register. It is not. Member Agor asked we don't have jurisdiction. Ms. Chow said no, we have jurisdiction. The court made a finding in this case that the State owns Hapa Road.

Member Morgan said ok, now I'm sufficiently confused. Mr. Tsuji said that is why I didn't want to bring it up, but someone asked if there were other authorized. Member Goode said I think I brought that up.

Member Morgan said personally, I feel that there are a gazillion roads and bike paths. I go to the North Shore quite often there is a wonderful bike path that goes from Keanui and Ke Ikiwaena and all across with a half a dozen roads and at all kinds of different places, all over. From the taking away and from a who loses point of view I don't see that as a tremendous problem, but that is just my experiences as an individual. I love to go walking all over the place in nature and down roads. I don't have a problem with this particular issue. I'm going to go in favor of staff's recommendation and he made the motion. Member Goode said he will second it that I am in general agreement. Some of this may get sorted out by the law suits and appreciative of the applicant's agreement to limit it to one access point in making the motion before that. I think amended if you want any vehicular access point only. I think a 1.2 mile trail should have pukas so people can get in and out. It sounds like a County of Kauai Land Commission approved project so the local jurisdiction has approved it. I am going to vote for it with the reprisal that it's the sole vehicular crossing on Hapa Road by the Knudsen Trust.

Mr. Tsuji asked for staff's clarification it's amended with one vehicular crossing and that's it. Ms. Chow asked for clarification whether that is on the unimproved portion because there is already a portion used for vehicles. Member Morgan said unimproved. Member Goode agreed.

Mr. Tsuji asked the other part was how does that impact the withdrawal. The requested changed to the withdrawal paragraph is denied. Is that right? Ms. Chow said if they are only allowing one vehicular access whether it's this access or whether withdraw this access or give them a substitute access it will still be only one access. I think the location...Mr. Tsuji said so it wasn't this is the only one and that's it.

Member Edlao commented I can go with the motion and agreed with. (to Stacy) I had hoped to trust your work with the community to maintain or improve because that particular road is not only important to the community, but also to you and the subdivision. It is a great asset to have a historical trail along side your subdivision so I would like to see you guys work together in maintaining that trail in some way, give some assistance to the community.

Member Agor took the vote. Member Gon said to honor the great, great, great grandson of Kamanolau I will say nay. All other members voted yes. 4- ayes and 1 nay. The motion passes.

The Board:

Approved as amended. Recommendations section was amended by adding a condition number 3, to read "The applicant shall be limited to only one (1) vehicular crossing or access on the unimproved or unpaved portion of Hapa Road.

Approved as amended (Morgan, Goode)

Item D-17 Grant of Term, Non-Exclusive Easement to James Hugh Duncan and Barbara-Jeann Duncan for Seawall and Revetment Purposes, Lanikai, Koolaupoko, Oahu, Tax Map Key: (1) 4-3-005:seaward of 056.

Written testimony from Lauri Clegg of Analytical Planning Consultants, Inc. was distributed to the Board.

Mr. Tsuji said the request was made on staff's recommendation and analysis and the applicant has their own opinion on this matter, but what we have here is the staff's request that the Board grant an easement for a seawall and revetment on State land and from our research it looks like the seawall or the easement area that contains a portion of the seawall and the revetment is outside the recorded boundary of the abutting private property with State land within the shoreline area. What is significant on this one is historically there were approvals granted by both the Department of Transportation (DOT) and the Department of Land and Natural Resources (DLNR) authorizing the construction of it. At that time it never required an easement and I can say the staff at DLNR at that time there were no lawyers at all in that division. Today we have six (6) in the division alone. Including myself and we have been since advised that seaward of the shoreline is State regardless of title or even if you have a Land Court deed that says the private property is in the ocean it's still ours (the State). In this case we don't have that situation, but we have that we we're able to determine was among our research this structure was built outside of the recorded boundary of the private landowner. I think it's significant and the reason we are bringing this before this Board and I extend this to the applicant's representative that as a staff member I was so advised by Bill Wynhoff in the Gold Coast litigation and I also need to do this. Secondedly, we were brought into lawsuits now where if people were to get hurt and right now this area doesn't have an easement so there is no insurance and no indemnity except us. If someone were to trip over this revetment without insurance we will have to fend for ourselves. Here I'm asking for an easement which will require the typical requirements of insurance, indemnity, etc. I believe I am acting in the best interest of the State. But I do understand if we attach those prior approvals back in those days they were not aware that an easement would be required.

Lauri Clegg testified she is President of Analytical Planning Consultants representing the owner, Mr. Hugh Duncan. He asked the Board to reconsider the necessity for an easement for a rock blanket, rock placed makai of the existing seawall. Staff and the applicant had met and Mr. Duncan understands the State's concerns, but the applicant

finds it hard to understand when there were so many authorizations that he needs further approval. Ms. Clegg related some prior history on the matter. All the approvals were obtained from four (4) agencies and the stated purpose of the permit were to protect the structures from wave action, the properties from erosion and to prevent further depletion of the sand. The beach was replenished when the owner bought his property in 2006. She related a 2002 OCCL letter for another property that the rock blanket was not considered encroachment or any conservation district violations. The easement issue was never raised and was resolved by these approvals which were the owner's understanding. Now the owner wants to sell the property, but there are unresolved issues which makes the property unmarketable. Someone wants to build a new house and you need a certified shoreline and can't be granted unless the encroachment was authorized, but it seems like it has. The owner is willing to comply with State law, but was reluctant with the easement agreement not knowing how much it would be and it's time consuming. It was already resolved in 1968.

Member Agor said this is standard.

Member Morgan said that it is clear that if someone gets hurt they could sue the State because it is not the client's property. Ms. Clegg noted the document or approval does say that the State is not liable. Member Morgan said but that is the court. When somebody sued they have to represent themselves. I think that is what the State is trying to do we don't want this encumbrance and this contingent liability and from the stand point of insurance it is not going to cost anything to put a rider on that says the State will be indemnified as well as the homeowner and the homeowner has to always have insurance. Is that a correct assumption? Mr. Tsuji acknowledged that is what he has been told based on his personal experience. They are not asking for something that was not paid. Ms. Clegg pointed out that was the way things were done then. Member Morgan said it was done appropriately reiterating the liability issue with the State, but understands her client's confusion. The law is the law and your client needs to understand the need for the easement.

There was some discussion about permitting the rock blanket, not leaving it forever.

Ms. Clegg asked about chapter 13-222 which prohibits the State from certifying the shoreline if cost arisen from the improvement encroaches on State land. It's confusing because of the 4 agencies authorizing. It was a good idea for the beach. None of the other properties has to get an easement. There were discussions about the other properties with rock blankets. Mr. Tsuji noted that staff will have to follow up with the other properties. They are getting it for use, protection and serve a purpose for what is intended and the State is not protected from liability. He spoke of the various agencies involved.

Ms. Clegg asked whether this was a new thing and Mr. Tsuji said probably since the State started hiring attorneys and stricter Deputy Attorney Generals. Member Edlao noted that until someone brought up the certified shoreline the State discovered these things. I did tell Mr. Clegg I wasn't going to ask for retro. Ms. Clegg thanked him and asked whether

it was possible to have an easement without cost referring to piers. Mr. Tsuji said if you don't it's a default under the easement. It's mandatory. The owner will need to pay for the easement based on an appraisal where he described the process for a shoreline and discounts citing other examples.

Unanimously approved as submitted (Gon, Goode)

- Item M-1** **Issuance of a Master Lease, State Lease No. DOT-A-11-0008, FAA Agreement No. DTFAWN-12-L-0048, U.S. Federal Aviation Administration, Lihue Airport, Lihue, Kauai, Hawaii, TMK: (4)3-5-01: portion of 8**
- Item M-2** **Issuance of a Direct Air Cargo Lease to Aeko Kula, Inc. dba Aloha Air Cargo, Lihue Airport, Lihue, Island of Kauai, Hawaii, TMK: (4) 3-5-01:portion of 8**
- Item M-3** **Amendment No. 9 to Lease No. DOT-A-03-0001 Travelers Services Concession Lease Lenlyn Limited, Honolulu International Airport, Honolulu, Oahu, Hawaii, TMK: (1) 1-1-03: portion of 1 (Honolulu)**
- Item M-4** **Amendment No. 2 to Concession Premises Agreement No. DOT-A-09-0041 EAN Holdings, LLC. Db a Enterprises Rent a Car, Lihue Airport, Lihue, Kauai, TMK (4) 3-5-01:portion of 8**
- Item M-5** **Issuance of a Direct Lease to Royal Hawaiian Movers Ualena Street, Honolulu International Airport, Honolulu, Oahu, State of Hawaii, TMKs: portions of (1) 1-1-14:10, 1-1-14:05 and 1-1-14:02**

Ross Smith representing DOT – Airports said he has items M-1 through M-5. There are no changes.

Unanimously approved as submitted (Gon, Edlao)

- Item D-19** **Authorize issuance of a Request for Qualifications/Request for Proposals to select a potential lessee for public lands at Honouliuli, Ewa, Island of Oahu, Hawaii. TMKs: (1) 9-1-16:08; (1) 9-1-17:97; and (1) 9-1-18:05 & 08.**

Mr. Tsuji indicated item D-19 involves four parcels out at Kapolei and staff is requesting authority from the Board where two of the parcels were designated by the Board as income producing along North – South Road and two are along the planned rail transit line. The hope is to generate revenue to help support DLNR. Alec Sou from Aloun Farms and Larry Jefts are currently on 30 day RP and they know they will have to move and vacate at some point in time. He has been talking to them on possible relocation to some other lands at the former Del Monte lease lands. Previously the Board approved a set aside to the Department of Ag and since the court approval there was a water system

that the State may elect to tap into to help feed those lands. Mr. Tsuji's plan was to put them on 30 day RPs and eventually give it to Department of Ag and there is some urgency to get the lands right away and was fine with Aloun Farms. There maybe others interested in the former Del Monte lands. He added a recommendation #4 to say "In connection with the prior Land Board matter item D-1, December 9, 2005, agenda item involving the former Del Monte lease lands in Kunia, TMK, the Land Board in this Kapolei matter on item D-19 on the January 13, 2012 agenda asks that the Board of Ag and Department of Ag consider as tenants on the Kunia lands Aloun Farms (the Sou Brothers) and Larry Jefts." as the amendment.

Sam Peru testified thanking the Board saying they are involved with solar in Hawaii.

Member Goode asked this seems like the type of project that Public Lands Development Corp. (PLDC) was set up to do. As a new board is it alright to take lands that have high income potential. Mr. Tsuji said it maybe. It is already urban and is still AG 1 on it. The two parcels at least along the rail line are within the transit oriented development which is an area encouraging development. Staff thought we'd try this first and see how it goes. In that case we retain the revenue for the Department. PLDC is not part of the Department, but attached administratively. If staff does make a recommendation to make it fit with their mission they will come back. It was questioned by Member Goode whether this should really go to PLDC because they have the expertise. Mr. Tsuji said there is a lot of interest and is going as quickly as they can. He asked that the Board should be briefed about PLDC and the new law, but they still got to get their rules first. Mr. Tsuji described how PLDC was started by the Leg.

Member Morgan moved as amended. Member Gon seconded it. All voted in favor.

The Board:

Approved as amended. The Recommendations section was amended to add a condition/recommendation 4 to read:

4. In connection with the prior Land Board matter, Item D-1 on the December 9, 2005 Agenda item involving the former Del Monte leased lands in Kunia, TMKs: (1) 9-4-012:001, 002 & 003, the Land Board now in this Kapolei matter, Item D-19 on this January 13, 2012 Agenda asks that the Board of Agriculture and the Department of Agriculture work with and consider as tenants on the Kunia lands Aloun Farms (the Sou Brothers) and Larry Jefts.

Unanimously approved as submitted (Morgan, Gon)

Item C-8 Request for Approval of Incidental Take License and Habitat Conservation Plan for Auwahi Wind Farm Project, on the Island of Maui, Hawai'i, TMK: 2-1-007:103

Paul Conry, Administrator for Division of Forestry and Wildlife (DOFAW) introduced staff who is working on the HCP (habitat conservation plan). This is for a wind power project on Ulupalakua Ranch which has gone through for all reviews, endangered species committee, supported by Fish and Wildlife and the Department.

Unanimously approved as submitted (Edlao, Gon)

Item C-2 Authorization of Funding for the Nature Conservancy of Hawai'i for \$1,180,113 during FY 13-18 for Continued Enrollment in the Natural Area Partnership Program and Acceptance and Approval of the Kamakou Preserve Long Range Management Plan, TMK: 5-4-03-26, Moloka'i, Hawai'i

Item C-3 Authorization of Funding for the Nature Conservancy of the Hawai'i for \$675,131 during FY 13-18 for Continued Enrollment in the Natural Area Partnership Program and Acceptance and Approval of the Ka'u Preserve Long Range Management Plan, TMK: (3) 9-7-001:2, 9-7-001: 3, 9-7-001:4 (portion): (3) 9-7-001:7, Hawai'i

Item C-4 Authorization of Funding for the Nature Conservancy of Hawai'i for \$288,715 during FY 13-18 for Continued Enrollment in the Natural Area Partnership Program and Acceptance and Approval of the Mo'omomi Preserve Long Range Management Plan, TMK: 5-1-02-37, Moloka'i, Hawai'i

Item C-5 Authorization of Funding for the Nature Conservancy of Hawai'i for \$1,201,200 during FY 13-18 for Continued Enrollment in the Natural Area Partnership Program and Acceptance and Approval of the Waikamoi Preserve Long Range Management Plan, TMK: 2-3-05-04, Maui, Hawaii

Member Gon recused from items C-3, C-4 and C-5 because of the Nature Conservancy's involvement.

Mr. Conry said there were no changes to these items.

Unanimously approved as submitted (Morgan, Goode)

Item C-1 Request to Conduct Public Hearing Regarding a Set Aside of Approximately 342.24 Acres as an Extension of Pu'u Maka'ala Natural Area Reserve at TMK: (3) 2-4-08:09 (Por), South Hilo, Hawai'i and

Request Approval of Declaration of Exemption from Chapter 343, HRS, Environmental Assessment Requirements for this Action

Item C-6 Request to Conduct Public Hearing Regarding a Set Aside of Approximately 169 Acres as an Extension of Kipahoe Natural Area Reserve, TMK (3) 8-8-01:08, South Kona, Hawaii and

Request Approval of Declaration of Exemption from Chapter 343, HRS, Environmental Assessment Requirements for this Action

Mr. Conry said there were no changes to items C-1 and C-6.

Unanimously approved as submitted (Morgan, Gon)

Item C-7 Briefing on "HAHAI NO KA UA I KA ULULA'AU - the Rain Follows the Forest -A Plan to Replenish Hawaii's Source of Water"

Mr. Conry thanked the Board and turned it over to Emma Yuen. There was great support for this at the launch. It's one of those moments for the Department that if we don't act now we can't wait. In 10 years it will be too late. The drying of Lake Waiau atop Mauna Kea and it's time to take action.

Emma Yuen representing DOFAW briefed the Board with a video presentation. The plan is supporting ungulate removal policies using fencing in the next 10 years that will cost \$11 million per year. She related protecting areas from fire by increasing volunteering in the area which she pointed out on island maps. She also spoke about watershed areas, priority watershed forests, and statistics of each of the islands. All this information is in the plan. And, the importance of working with the Legislature.

Member Morgan pointed out Member Gon doing a great job describing the biodiversity and monoculture. A very good thing.

Item D-14 Issuance of Revocable Permit to the ATC Makena Services LLC for a Sailing Canoe Blessing and Dedication Ceremony at Maluaka Beach, Honuaula, Makena, Maui, Tax Map Key: (2) 2-1-006: seaward of 059.

Mr. Tsuji said he needs to withdraw item D-14

Withdrawn (Gon, Goode)

Item D-20 Annual Renewal of Revocable Permits on the Islands of Hawaii, Maui, Molokai, Kauai and Oahu.

Mr. Tsuji indicated that he wanted to amend item D-20 that two with RPs were excluded because they were owing rent, but they made it current and wanted to add to the list of renewals, permits 7684 and 7725.

The Board:

Approved as amended. Exhibit A was amended to add Revocable Permits 7684 [Shoreline Restoration of Hawaii, Inc.] and 7725 [Pestana Corp, DBA Bob's Equipment] to the list of permits that were approved for renewal.

Unanimously approved as amended (Morgan, Edlao)

- Item D-1 Set Aside to County of Kauai for Cemetery and Public purposes, Addition to the Veterans Cemetery Governor's Executive Order 1390 to the County of Kauai, and Immediate Right-of-Entry for Planning, Maintenance and Construction Improvement to Governor's Executive Order 1390, Hanapepe, Waimea, Kauai; Tax Map Key: (4) 1-8-08: 20.**
- Item D-2 Issuance of Revocable Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Shipwreck Beach on January 27, 2012, Poipu, Kauai, Hawaii, Tax Map Key: (4) 2-9-01: seaward of 2.**
- Item D-4 Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative (KIUC) for Access and Utility Purposes Over Governor's Executive Order No. 97 to the County of Kauai, for Wailua Park Purposes, por. of Wailua, Lihue, Kauai, Tax Map Key: (4) 3-9-002:portion of 004.**
- Item D-5 Forfeiture of General Lease No. S-5563, Stephen Sico, Lessee, Portion of Lot 173, Kapaa Homesteads, 3rd Series, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-6-8: 1**
- Item D-7 Consent to Assign General Lease No. S-5940, Gilbert K. Kealoha, Assignor, to Joseph K. Kealoha, Assignee, Kikala and Keokea, Puna, Hawaii, Tax Map Key: (3) 1-2-043: 066.**
- Item D-8 Consent to Assign General Lease No. S-5542, Donald W. Hughes and Muriel M. Hughes, Assignor, to Nicholas E. Muragin and Lisa K. Muragin, Assignee, Ola'a, Puna, Hawaii, Tax Map Key: 3rd/1-8-10:38,43,44,46.**
- Item D-13 Issuance of Right-of-Entry Permit to the United States Department of the Interior, U. S. Geological Survey, Hawaiian Volcano Observatory onto State lands Encumbered by Revocable Permit No. S-7765, Richard E. and Donna Lee Souza, Poupouwela, Ka'u, Hawaii, Tax Map Key: 3rd/9-5-12:02.**
- Item D-16 Authorization of a Bill of Sale to the City and County of Honolulu for the Waimanalo Wastewater Treatment Plant, TMK (1) 4-1-09:270**

Mr. Tsuji had no changes.

Unanimously approved as submitted (Edlao, Morgan)

Item J-2 Cancellation of Revocable Permit B-93-53 to Hawaii Big Game Fishing Club, and Reissuance of an Updated Revocable Permit to Hawaii Big Game Fishing Club, Inc., Honokohau Small Boat Harbor, Kealakehe, Honokohau, North Kona, Hawaii, TMK: (3) 7-4-08:003

Written testimony was submitted from Erik Coopersmith.

Mr. Underwood said he had no changes and stated what item J-2 was. No increase in the rent.

Unanimously approved as submitted (Edlao, Gon)

Item L-1 Appointment of Stanley Haraguchi and Certification of Election of Leslie Takayama as Directors of the Waiakea Soil and Water Conservation District

Item L-2 Appointment of Loren Mochida as Puna Soil and Water Conservation District Director

Item L-3 Appointment of Amos Meyers as Kau Soil and Water Conservation District Director

Unanimously approved as submitted (Morgan, Gon)

Adjourned (Gon, Morgan)

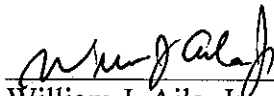
There being no further business, Chairperson Aila adjourned the meeting at 4:38 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



William J. Aila, Jr.
Chairperson
Department of Land and Natural Resources